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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 460

L. W. LANE, PETITIONER,

vs.

JESS WILSON, JOHN MOSS AND MARION PARKS

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE TENTH CIRCUIT**

PETITION FOR CERTIORARI FILED NOVEMBER 7, 1938.

CERTIORARI GRANTED DECEMBER 12, 1938.

UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE TENTH CIRCUIT:

NO. _____

I. W. LANE, APPELLANT,

vs.

JESS WILSON, JOHN MOSS, AND MARION PARKS,
APPELLEES.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA.

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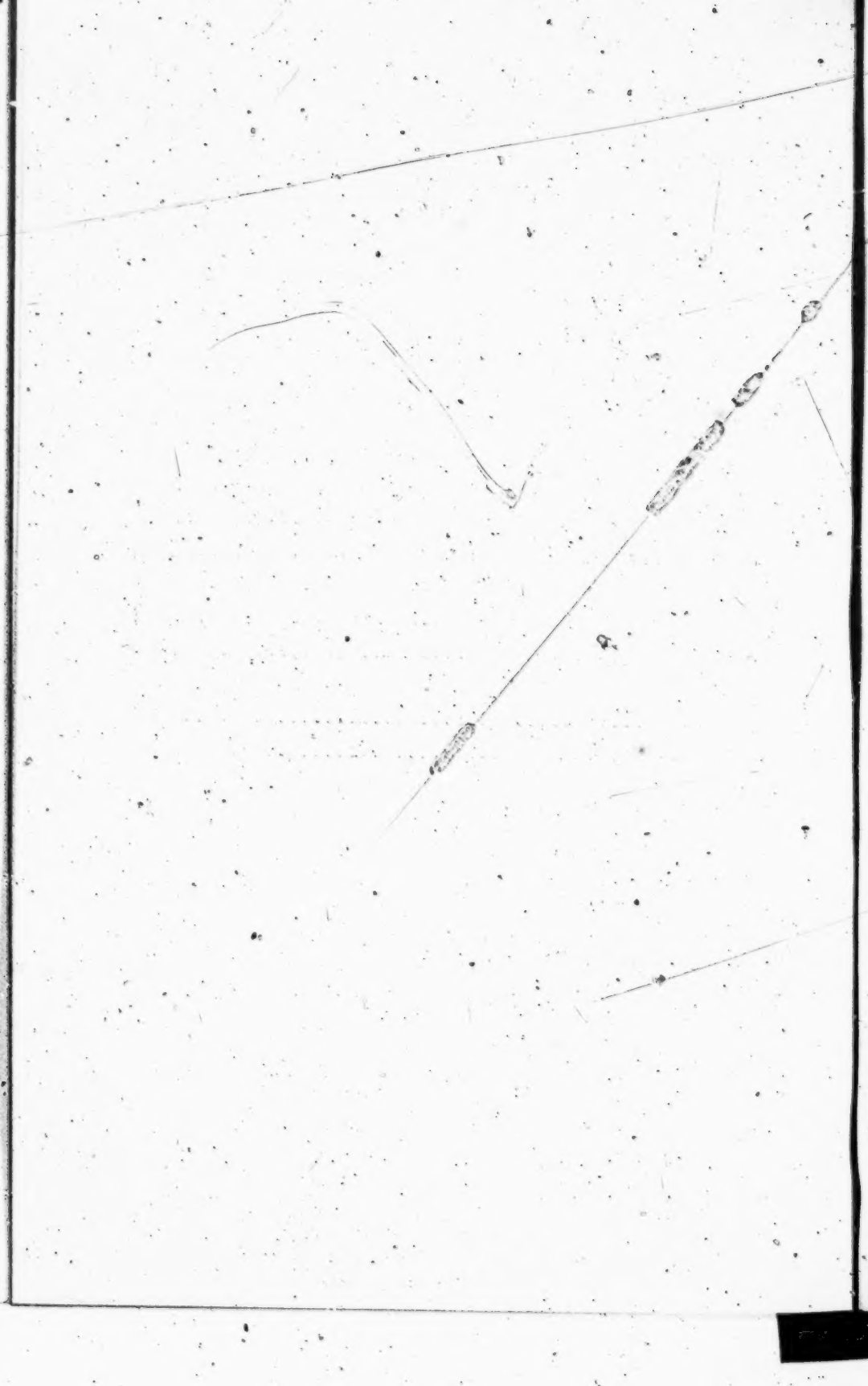
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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA.

PLEAS AND PROCEEDINGS BEFORE THE HONORABLE ALFRED P.
MURRAH, JUDGE OF THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF OKLAHOMA, PRESIDING IN THE FOL-
LOWING ENTITLED CAUSE:

I. W. LANE, PLAINTIFF,

No. 6353

vs.

Law

JESS WILSON, MARION PARKS, AND JOHN MOSS,
DEFENDANTS.

Petition.

For his cause of action against the defendants, Jess Wilson, Marion Parks and John Moss, and against each of them, plaintiff, I. W. Lane alleges and states:

1. That said plaintiff and each of the defendants are citizens and residents of Wagoner County, State of Oklahoma; that the amount involved herein, exclusive of interest and costs exceeds the amount and value of three thousand dollars; that this action involves a federal question, namely, the right of suffrage of plaintiff under the Constitution of the United States, the Fourteenth and Fifteenth Amendments thereto, and the laws of the United States enacted pursuant thereto.

2. That the plaintiff, I. W. Lane is a male Negro citizen of the United States, is approximately sixty six years of age, was born in Talladega County, State of Alabama; that plaintiff is a resident and citizen of the State of Oklahoma, having continuously and in good faith resided in the Town of Red Bird, in Wagoner County, in said State since about the 1st

day of January, A.D., 1908; that plaintiff now resides in, and continuously for more than one year next preceding the 24th day of October 1934, hereinafter mentioned, has resided in the Election precinct in Wagoner County, Oklahoma, legally designated "Gatesville Precinct No. 1".

3. That plaintiff, L. W. Lane, has never been adjudged guilty of a felony or any crime; that plaintiff is not now, was not on October 24th, 1934, nor has he ever been confined in any poor house or any asylum at public expense or otherwise; that plaintiff is not now, nor was he ever confined in any public prison; that plaintiff is not a lunatic nor an idiot. Plaintiff further alleges that by reason of the allegations herein above made, he was in all particulars on the 24th day of October, 1934, a duly qualified elector of said State of Oklahoma, according to the laws of said State, and as such was entitled to be registered as such elector.

4. Plaintiff further alleges that on the 24th day of October, 1934, the defendant, Jess Wilson, was the duly appointed, qualified and acting County Registrar of Wagoner County, State of Oklahoma; and on said day the defendant, Marion Parks, was the duly appointed, qualified and acting Precinct Registrar of the aforementioned precinct in Wagoner County, Oklahoma, designated as "Gatesville Precinct No 1", in which precinct at said time, this plaintiff was residing and in which precinct plaintiff had resided for more than thirty days next preceding said 24th day of October, 1934. That the defendant, John Moss, on the 24th day of October, 1934, was the duly elected, qualified and acting County Judge of Wagoner County, State of Oklahoma.

5. That under the laws of the State of Oklahoma, (Section 5652, Okla. Stat. 1931), registration is a prerequisite to the right of the citizens of said State to vote in any election held in said State, and unless and until said plaintiff is registered, as provided by the said laws of Oklahoma, the said plaintiff will not be entitled to vote at any election held in the State of Oklahoma, and in said County and Precinct.

6. That on November the 6th, 1934, there is to be held in the State of Oklahoma, and in Wagoner County, according to the laws applicable thereto, a general election, at which election, Representatives to the Congress of the United States and State and County officers are to be voted upon, and unless

said plaintiff is afforded a reasonable opportunity to be registered and is registered pursuant to the aforementioned laws of Oklahoma, he will be denied the fundamental and constitutional right to vote at said general election in his above named precinct.

7. That such a denial of the right of said plaintiff to vote at said election for said Representatives to the Congress and for said State and County officers, will constitute to plaintiff a denial of the right of suffrage as a citizen of said County and State and of the United States, and will constitute to plaintiff a denial of the equal protection of the laws, contrary to the Constitution and laws of the State of Oklahoma, and contrary to the Constitution of the United States, the Fourteenth and Fifteenth Amendments thereto and to the laws of the United States enacted pursuant thereto.

8. Further, plaintiff states that in 1916 there was enacted by the Legislature of the State of Oklahoma, a registration law providing for the registration of qualified electors to vote in the various elections of said State and counties. It was provided in said registration law that the only qualification of an elector was that such elector must have been a citizen of the United States and of the State of Oklahoma for more than one year, and a resident of the County for more than six months and in the precinct for more than thirty days prior to April 30, 1916, or prior to any subsequent registration period (Sec. 5654 Okla. Stat. 1931).

9. It was further provided in said registration law (sec. 5654 Okla. Stat. 2931) that: "It shall be the duty of the precinct registrars to register each qualified elector of his election precinct who makes application between the 30th day of April 1916, and the 11th day of May 1916," * * * "and provided that it shall be the mandatory duty of every precinct registrar to issue registration certificates to every qualified elector who voted at the general election held in this State on the first Tuesday after the first Monday in November, 1914, without the application of said elector for registration, and to deliver such certificate to such elector if he is still a qualified elector in such precinct, and the failure to so register such elector who voted in such election held in November, 1914, shall not preclude or prevent such elector from voting in any election in this state; etc." It was further provided in

said section, "That each County election board in this State shall furnish to each precinct election board in the respective counties a list of the voters who voted at the election in November, 1914, and such list shall be conclusive of the right of such person to vote".

10. Further, plaintiff states that during the first registration period, between April 30, 1916, and May 11, 1916, said plaintiff was a resident of said State, county, and precinct for a long time prior thereto, as set forth above; that during said registration period, this plaintiff made application at the time and in the manner required by law to the precinct registrar of said precinct mentioned herein, for registration under the registration law of Oklahoma, and that the then precinct registrar in said precinct refused to register plaintiff, solely on account of his race, color and previous condition of servitude. The said plaintiff made application to the respective registrars of said precinct at each and all of the subsequent registration periods, and was refused registration at each and all of said registration periods solely on account of his race, color and previous condition of servitude.

11. That the respective registrars in said County and precincts, during the registration period in May, 1916, and of all subsequent registration periods respectively, informed said plaintiff, that they had no authority or instructions to register any Negroes; and the registrars of said precincts during each and all of said registration periods refused to register any Negroes, including this plaintiff, solely on account of their race, color and previous condition of servitude.

12. Further, plaintiff states that ever since the passage of said registration law aforesaid, and ever since the same became effective, the county and precinct registrars and the county election board of said Wagoner County have unlawfully combined, confederated and conspired together, and have formulated and devised various schemes and plots whereby they have prevented and still prevent the Negro residents of said Wagoner County, including particularly this plaintiff, from being registered in their respective precincts. That said conspiracy was set in motion and operation during the registration period between April 30, 1916, and May 11, 1916, and has continued to operate during each and all of the registration periods thereafter and still continues to operate,

and plaintiff further states that as a result of said conspiracy, it has become the general, habitual and systematic practice of said county registrars, including this defendant, Jess Wilson, and his predecessors in office, to refuse to register Negro residents of said Wagoner county, including the plaintiff, I. W. Lane, and to deprive them of their right of suffrage solely on account of their race, color and previous condition of servitude.

13. Further, that in furtherance of the conspiracy and to further promote the schemes and plots aforesaid, the said county registrars, the county election board and the precinct registrars of said Wagoner County and of said precincts, have secretly and connivingly entered in to a pact and agreement among themselves whereby they have agreed not to register any Negro elector in said County and in said precincts, and the said county registrars, including the defendant, Jess Wilson and their predecessors in office, have given specific instructions to said precinct registrars, including the defendant, Marion Parks, not to register any Negroes in their said precincts, and plaintiff further states that by reason of said unlawful agreement and by reason of the instructions of said county registrars, including the defendant, Jess Wilson, the precinct registrars, including the defendant, Marion Parks, have persistently refused, and still refuse to register the Negro electors in said precincts, including the precinct in which plaintiff resides.

14. That as part and parcel of the conspiracy aforesaid, and in furtherance thereof, the said county registrars and precinct registrars have invented, devised and set in motion and operation various schemes, tricks and artifices and have used every subterfuge to prevent the registration of Negroes and to deprive them of their fundamental and constitutional right of suffrage, to wit, said county election officials would intentionally fail and refuse to appoint proper registrars in said precincts at the proper time, and would fail to furnish them with sufficient blanks and registration books; said officials would wilfully and intentionally mislead and misinform the Negroes as to the proper identity of their respective precinct registrars; said precinct registrars would intentionally absent themselves from their homes and offices where the registration books are kept and would conceal themselves from the Negro residents; that some member of the registrar's

family would inform the Negro applicants that the registrar was not at home, or was busy; that if said Negro electors would accidentally meet said registrars, they would inform them that they had run out of blanks, or that they did not have the registration books, or that the registrar was some one else; or that the Negro electors had to get a Court order before they could be registered. That when no other excuse was available, said registrars would inform the Negro electors that they had instructions from superior officials not to register Negroes and said precinct registrars would thereupon refuse to register said Negro electors. That some of said precinct registrars have threatened violence and serious bodily harm upon Negroes who duly made application for registration.

15. That pursuant to the laws of the State of Oklahoma, the registration period for the aforementioned election of November 6, 1934, began on October 17, 1934, and closes on the 26th day of October, 1934. That on the 24th day of October, 1934, this plaintiff, I. W. Lane, being then a duly qualified elector of said precinct, county and state aforesaid, duly presented himself to the defendant, Marion Parks, precinct registrar aforesaid, and at said time, this said plaintiff made application to said defendant, Marion Parks, for registration and for a registration certificate, which said registration and registration certificate said Marion Parks refused said plaintiff solely on account of the race, color and previous condition of servitude of plaintiff; and at said time said Marion Parks, precinct registrar aforesaid, advised this plaintiff that he had been forbidden by said John Moss, County Judge of Wagoner County, Oklahoma, and by Jess Wilson, County Registrar of Wagoner County, Oklahoma, to register any Negroes.

16. Further, that in refusing to register this plaintiff, as set forth above, and in making it impossible for plaintiff to register and to vote in the aforementioned election, said defendants were acting pursuant to the aforementioned conspiracy; said defendants, and each of them, were and are violating the rights of plaintiff, under the Constitution of Oklahoma, and under the Constitution of the United States, the 14th and 15th amendments thereto, and the laws of the United States enacted pursuant thereto.

17. Further, the illegal acts of the defendants Jess Wilson, John Moss and Marion Parks hereinabove alleged, con-

stitute a violation of Section 31, Chapter 2 of Title 8 of United States Code (R. S. Sec. 2004). That in the violation of the rights of said plaintiff, said defendants, and each of them, were acting under color of certain statutes of the State of Oklahoma hereinafter mentioned, and under color of custom and usage in said County of Wagoner and State of Oklahoma, and caused said plaintiff to be deprived of rights, privileges, and immunities secured by the Constitution and laws of the United States.

18. Further, that in the illegal acts hereinabove complained of, said defendants and each of them were acting under the color of Chapter 29 of the Oklahoma Statutes of 1931, and especially under color of Article 3 of said chapter, and under color of Section 5654 of said Article 3, Chapter 29 of said laws of Oklahoma, 1931, and Section 5657 of said Article and Chapter. That said Section 5654, Article 3, Chapter 29, (C. O. S. 1921, Sec. 6252) provides as follows:

“Registration—general regulations. It shall be the duty of the precinct registrar to register each qualified elector of his election precinct who makes application between the 30th day of April, 1916, and the 11th day of May, 1916, and such person applying shall at the time he applies to register to be a qualified elector in such precinct and he shall comply with the provisions of this act, and it shall be the duty of every qualified elector to register within such time; provided, if any elector should be absent from the county of his residence during such period of time, or is prevented by sickness or unavoidable misfortune from registering within the precinct registrar within such time, he may register with such precinct registrar at any time after the tenth day of May, 1916, up to and including the thirtieth day of June, 1916, but the precinct shall register no persons under this provision unless he be satisfied that such person was absent from the County or was prevented from registering by sickness or unavoidable misfortune, as hereinbefore provided. And provided that it shall be the mandatory duty of every precinct registrar to issue registration certificates to every qualified elector who voted at the general election held in this State on the 1st Tuesday after the first Monday in November, 1914, without the applica-

tion of said elector for registration, and, to deliver such certificate to such elector if he is still a qualified elector in such precinct and the failure to so register such elector who voted in such election held in November, 1914, shall not preclude or prevent such elector from voting in any election in this State; and provided further, that whenever any elector is refused registration by any registration officer such action may be reviewed by the District Court of the County by the aggrieved elector by his filing within ten days a petition with the Clerk of said Court, whereupon summons shall be issued to said registrar requiring him to answer within ten days, and the District Court shall be (give) a (an) expeditious hearing and from his judgment an appeal will lie at the instance of either party to the Supreme Court of the State as in civil cases; and provided further, that the provision of this Act shall not apply to any school district elections. Provided further, that each County election Board in this State shall furnish to each precinct election board in the respective counties a list of the voters who voted at the election in November, 1914, and such list shall be conclusive evidence of the right of such person to vote.”

and Section 5657 Oklahoma Statutes, 1931, (C. O. S., 1921 Section 6255), provides as follows:

“Elector—oath and requirements—exceptions—registrars’ books and records. Each qualified elector in this State may be required to make oath that he is a qualified elector in such precinct, and shall answer under oath any questions touching his qualifications as an elector and give under oath the information required to be contained in a registration certificate. Except in the case of a qualified elector who voted at the general election held in this State on the first Tuesday after the first Monday in November, 1914, in which case it shall be mandatory duty of the precinct registrar to register such voter and deliver to such voter a registration certificate and the failure to so register such elector and to issue such certificate shall not preclude or prevent such elector from voting at any election in this state. If any person shall fail or refuse to give the information required in a registration certificate, or fail or refuse to answer any questions pro-

pounded to him by said registrar touching his qualifications as an elector, such person shall not be registered and no certificate of registration shall be issued to him. If said registrar shall be satisfied that any person who makes application to register is a qualified elector in the precinct at such time, and if such person complies with all the provisions of this Act, then said registrar shall detach the original registration certificate, properly filled in and containing the information required in this Act, and deliver to such person such original registration certificate. Etc."

19. Further, plaintiff alleges, upon information and belief, that the above mentioned Section 5654, Okla. Stat. 1931, (C. O. S., 1921, Sec. 6252,) and Sec. 5657, Okla. Stat. 1931, (C. O. S., 1921, Sec. 6255) are mere subterfuges aimed exclusively and directly at and against Negro citizens of the United States residing in the State of Oklahoma, and further that said laws are and were designed for the exclusive purpose of depriving said Negro citizens of the right of suffrage, and in violation of Section 6, Article 1 of the Constitution of Oklahoma and also in violation of the 15th Amendment of the Constitution of the United States, and in violation of the laws of the United States enacted pursuant thereto. Said Statutes and laws are further an illegal and cunning attempt to achieve the illegal purpose sought by "(The Amendment) Section 4a, Grandfather Clause of Article iii of the Constitution of Oklahoma, and to evade the effect of the decision of the Supreme Court of the United States, "(Guinn vs. United States," decided June 21st, 1915, 238 U. S. 347, 59 L. Ed. 1340.) That said State Statutes designated for the purpose aforesaid were enacted on February 26, 1916, immediately after the above mentioned decision of the Supreme Court of the United States; and said laws provide for an unjust, unreasonable and illegal classification of the electors of the United States and of the State of Oklahoma; they give to precinct registrars therein provided for an arbitrary and capricious discretion to deny or refuse qualified Negro electors the right of suffrage; and said State laws deny and abridge the right of Negro citizens, including this plaintiff, to vote, solely on account of race, color and previous condition of servitude. That precinct registrars of Oklahoma in general in denying the right to register and the right of suffrage throughout said

State of Oklahoma, and the defendants hereinabove named in denying and refusing to permit this plaintiff to register or to vote, as hereinabove specified, were and are carrying out the patent and expressed intent and design of said State laws.

20. That in the conspiracy concocted by said defendants hereinabove mentioned, and the illegal acts of them perpetrated against the plaintiff, as set forth above, said defendants violated Section 43 of Chapter 3, Title 8, U. S. Code (R. S. Section 1979). That said defendants by their said illegal and wrongful acts have damaged this plaintiff in the sum of and to the extent of Five Thousand Dollars, (\$5000.00). That said defendants with an illegal intent, wilfully, and maliciously violated the aforementioned rights of this plaintiff, and because thereof, plaintiff is entitled to a judgment against the said defendants and against each of them, in the sum of Five Thousand Dollars (\$5000.00) as punitive damages.

Wherefore, plaintiff prays for judgment against said defendants Jess Wilson, Marion Parks, and John Moss in the sum of Five Thousand Dollars (\$5000.00), jointly and severally, as actual damages, and for judgment against them and each of them in the further sum of Five Thousand Dollars (\$5000.00) as punitive damages, and for the costs of this action.

And said plaintiff further prays for such other and further relief as he may be entitled to.

Dated this 26 day of October, 1934.

I. W. LANE,

Plaintiff.

CHARLES A. CHANDLER,

C. E. ROBERTSON,

Attorneys for Plaintiff.

Verification.

State of Oklahoma,
County of Wagoner—ss.

I. W. Lane of lawful age, after having been first sworn according to law, deposes and says that he is the plaintiff named in the above and foregoing petition; that he has read the same and is familiar with the contents thereof, and that

the matters, allegations and things therein stated are true and correct, except as to those statements made upon information and belief, and as to those statements he believes them to be true.

I. W. LANE,
Plaintiff.

Subscribed and sworn to before me this 26 day of October, 1934. N. J. Edwards, Notary Public. (Seal) My commission expires Oct. 28, 1934.

Filed Oct. 27, 1934. W. V. McClure, Clerk.

(Caption omitted.)

Separate Answer of Defendants, Jess Wilson and
Marion Parks.

Come now the defendants, Jess Wilson and Marion Parks, and for their answer to the plaintiff's petition deny each, every and all the material allegations therein; except, however, such as are specifically admitted.

They admit that the defendant, Jess Wilson, was the County Registrar, and defendant, Marion Parks, was the Precinct Registrar, of Gatesville Precinct No. 1, Wagoner County, Oklahoma, and defendant, John S. Moss, was the duly qualified and elected County Judge of Wagoner County, Oklahoma, at the time complained of in plaintiff's petition.

They deny that the amount involved exclusive of interest and costs, exceed the amount and value of the sum of \$3,000.00; that this action involves a Federal question, the right of suffrage under the Constitution of the United States, 14th and 15th Amendment and the laws of the United States pursuant thereto; that the plaintiff is a resident of Redbird, Wagoner County, Oklahoma, and has been such resident since about the 1st of January, 1908; that plaintiff resides and has continuously resided for more than one year next preceding the 24th day of October, 1934, in the aforesaid election precinct, and deny that the plaintiff has never been adjudged guilty of any felony or crime; that he was on the 24th day of October, 1934, a qualified elector of the State of Oklahoma, according to its laws, and was entitled to registration under its laws of said State.

They deny that under the laws of the State of Oklahoma, registration in every instance is a pre-requisite to the right of citizens of the State to vote in any of all the elections held therein and unless registered, he will not be entitled to vote at any elections held in the State, County and Precinct. They admit that on the 6th day of November, 1934, a general election was held at which Representatives, Congressmen, State and County officers were elected, but they deny that plaintiff was denied any fundamental and constitutional right under the general election laws; they further deny that by reason of any of the acts complained of, the plaintiff was not afforded the equal protection of the law and that the law or Constitution of the State of Oklahoma, or of the United States, was in any way abridged or offended by reason of their acts or conduct. They admit that in 1916, a universal registration law was passed and approved by proper constituted authorities, same being Chapter 24, Session Laws of 1918, State of Oklahoma, and that Section 5654, Oklahoma Statutes 1931, as substantially copied in plaintiff's petition, is true and correct. They deny that during the first registration period under the said universal registration law, and during subsequent registration periods, plaintiff made application as provided by law, to the proper precinct registrar of his precinct for registration; and they further deny that the precinct registrar of said precinct at the time mentioned, refused to register plaintiff solely on account of his race, color and previous condition of servitude; that plaintiff made application to the registrar of his precinct at the recent precinct registration period and was refused registration solely for the reason last above mentioned. They deny that the respective precinct registrar of Gatesville Precinct No. 1, during the registration period in May, 1916, and subsequent registration periods, informed the plaintiff that they had no authority or instructions to register negroes, giving as their reason that he was a negro and refused to register him by reason thereof. They further deny that ever since the passage of the aforesaid registration law, the county and precinct registrars and county election board of Wagoner County have unlawfully combined, confederated and conspired together and devised various schemes and plots preventing negroes in Wagoner County, including plaintiff, from being registered in their respective precincts, and deny such condition ever existed or set in motion between April

30th, 1916, and May 11, 1916, or at any other period, and that such has existed during each and all of the registration periods thereafter and that such continues operative. They deny it has been a general habit and custom of the county registrars, including the defendant, Wilson, to refuse to register negroes of said county and to deprive them of their right of suffrage, solely on account of their race, color and previous condition of servitude. They further deny that in furtherance of any conspiracy, the county registrars and county election board and precinct registrars of Wagoner County, have secretly and connively entered into any agreement whereby they would not register negroes and that the aforesaid alleged conspirators, including the defendants herein, have given specific instructions to precinct registrars, including the defendant Parks, not to register negroes in the respective precincts of Wagoner County. They deny they have refused and still refuse to register negro electors in their respective precinct; that schemes, tricks, etc., have been used to prevent negroes from registering and to deprive them of their rights of suffrage; that the county election officials have failed and refused to furnish blanks, books, etc., incident to the duties of said registrars, nor have the officials misled and misinformed the negroes as to the precinct in which they should be registered; nor have they absented themselves from home and office where the registration books are kept nor have they concealed themselves from negroes desiring to register, nor is it true that members of the registrar's family would inform negroes that the registrars were not at home or busy, or they had run out of blanks, did not have registration books; that the registrars were somewhere else; that the negro electors had to get a court order; that they had no instructions from superior officials and that by reason thereof, refused to register negro electors; informed them and threatened bodily harm to negroes seeking registration. They deny that on the 24th day of October, 1934, or at any other time, the defendant Parks refused to register plaintiff solely on account of his race, color and previous condition of servitude, nor did the said Parks advise the plaintiff that he had been forbidden by the defendant, John Moss, County Judge of Wagoner County, and Jess Wilson, County Registrar, of said County, to register negroes. They further deny that by reason of their act or conduct or that of either of them, as complained of,

they were acting pursuant to any conspiracy between them or any other persons and by reason of their acts and conduct, they violated any of plaintiff's rights, particularly the 14th and 15th Amendment of the Constitution of the United States and laws of the United States pursuant thereto.

Defendants admit the Statutes mentioned and quoted in plaintiff's petition partly cover the duties of election officials, including the duties of County and Precinct Registrars, but deny that under any custom and habit, such officials in Wagoner County, deprived the plaintiff of any constitutional rights, but that they, in all respects, endeavor to do their duty as County and Precinct Registrars in accordance with the laws in such cases made and provided, and in accordance with their best understanding and knowledge thereof; that in the event the Statutes of the State of Oklahoma, mentioned by plaintiff, were void and not in force and effect, such was not known to them, but in this connection they deny that the Statutes mentioned by plaintiff are illegal and void and they further allege that the election laws of Oklahoma are fair and just, without discrimination, and applies to all alike regardless of race, color or previous condition of servitude, and therefore, deny that said election laws complained of by plaintiff are mere subterfuges aimed exclusively and directly at negro citizens, residing in the State of Oklahoma, and deny that they were designed and intended for the exclusive purpose of depriving negro citizens of the right of suffrage, and such are in violation of the Constitution of the State of Oklahoma and the Constitution of the United States, and the laws enacted pursuant thereto, and they deny that said laws were passed and approved in order to evade the judgment of the court in the case of *Guinn vs. United States*, and they deny that the election laws of Oklahoma are unjust and *unjust and* illegal classification of electors of the State of Oklahoma; that it is not true that such laws give the precinct registrars an arbitrary and capricious discretion to deny or refuse qualified electors of the right of suffrage, and that said election laws abridge the right of negro citizens, including plaintiff, to vote, solely on account of race, color and previous condition of servitude.

Defendants for further answer state that if it be true that plaintiff has been denied registration, as claimed, that

he, at all times, had the right to appeal to the District Court of Wagoner County, to have reviewed the action of the Precinct Registrars of which he complains, by filing a petition with the Court Clerk, within ten days from such refusal, and wherein an expeditious hearing might have been had; likewise, than an appeal would lie from the District Court to the Supreme Court of the State of Oklahoma, in the event the plaintiff was illegally denied his right of suffrage. Therefore, is all things and matters, of which the plaintiff complains, are true, he has waived his statutory right as herein mentioned, and should not now be heard to complain and for such reason should be denied relief herein.

Defendants further allege that the registration period complained of in plaintiff's petition, was a period of special registration of newly qualified electors, at which time plaintiff was not entitled to be registered, even though he possessed the necessary qualifications, that is to say, that by and under Section 9 of the Universal Registration Laws herein mentioned, it is provided:

"Any person who may become a qualified elector in any precinct in this State after the tenth day of May, 1916, or after the closing of any other registration period, may register as an elector by making application to the registrar of the precinct in which he is a qualified voter, not more than twenty nor less than ten days before the day of holding any election and upon complying with all the terms and provisions of this Act, and it shall be the duty of precinct registrars to register such qualified electors in their precinct under the terms and provisions of this Act, beginning twenty days before the date of holding any election and continuing for a period of ten days. Precinct registrars shall have no authority to register electors at any other time except as provided in this Act and no registration certificate issued by any precinct registrar at any other time, except as herein provided shall be valid. After the close of registration ten days before any election as herein provided, and after the close of the registration of electors on June 30, 1916, or after the close of any other supplemental registration, the precinct registrar shall, immediately after the closing of such registration, enter upon the precinct register the

names of all persons registered during such period hereinbefore provided, and shall deliver to the Secretary of the county election board the duplicate registration certificates so issued in the same manner as hereinbefore provided, and the secretary of the county election board shall receive such certificates, receipt for the same, and add the names of such electors in the county registration book in the same manner as hereinbefore provided."

Defendants allege that plaintiff should not be permitted to prosecute his action for the further reason that the *gravamen* of plaintiff's petition is: that these defendants agreed and conspired to prevent his registration under the laws of Oklahoma, and then challenges the registration law as being unconstitutional and violative of the 15th Amendment of the Constitution of the United States and the laws of the United States enacted pursuant thereto. In other words; plaintiff asks the Court to punish these defendants in damages for their refusal to register him as an elector, under the Universal Registration Laws of the State of Oklahoma, which they plead is unconstitutional and without force and effect.

And defendants further deny that the plaintiff has been damaged in the sum of \$5,000.00 or any other sum by reason of any act of these defendants.

Wherefore, premises considered, they pray that the petition of the plaintiff be dismissed, and that they have judgment for their costs.

CHAS. G. WATTS,
Attorney for Defendants Jess Wilson
and Marion Parks.

State of Oklahoma,
County of Wagoner, ss.

Jess Wilson and Marion Parks, being duly sworn, on oath state: that each of them are one of the defendants mentioned in the above entitled cause of action; that they have read the foregoing answer and know the contents thereof and the statements set forth therein are true and correct as they verily believe.

.....
.....

Subscribed and sworn to before me this the day of January, 1935. My commission expires

Filed Jan. 12, 1935. W. V. McClure, Clerk.

(Caption omitted.)

Separate Answer of Defendant John Moss.

Comes now the defendant, John Moss, and for his separate answer to that part of plaintiffs petition which seeks to complain of this defendant and that only, denies each and every allegation in the petition which seeks to complain of this defendant except such as are hereinafter admitted.

1. This defendant admits that the defendant Jess Wilson was the County Registrar of Wagoner County, State of Oklahoma, on the 24th day of October, 1934; That Marion Parks was, on said date, the Precinct Registrar of Gatesville Precinct No. 1 in said Wagoner County, State of Oklahoma; That this defendant, John Moss, was the duly elected, qualified and acting County Judge of said Wagoner County; That the plaintiff I. W. Lane, was a resident of Gatesville Precinct No. 1 in said County and State.

2. This defendant admits that pursuant to the Laws of the State of Oklahoma, the Registration period for the general election to be held on November 6, 1934, began on October 17, 1934, and closed on the 26th day of October, 1934;

3. Further answering the allegations in paragraph fifteen of plaintiffs petition: "That on the 24th day of October, 1934, this plaintiff, I. W. Lane, being then a duly qualified elector of said precinct, County and State aforesaid, duly presented himself to the defendant, Marion Parks, Precinct Registrar aforesaid, and at said time, this said plaintiff made application to said defendant, Marion Parks, for registration and for a registration certificate, which said registration and registration certificate said Marion Parks refused said plaintiff solely on account of the race, color and previous condition of servitude of plaintiff; and at said time said Marion Parks, Precinct Registrar aforesaid, advised this plaintiff that he had been forbidden by said John Moss, County Judge of Wagoner County, Oklahoma, and by Jess Wilson, County Registrar of Wagoner County, Oklahoma, to register any ne-

groes.", this defendant has no knowledge but believes said quoted allegations to be not true, and therefore, denies same.

4. Further answering the aforesaid allegations, this defendant denies that he, at any time, did or said anything to the Precinct Registrar, Marion Parks calculated or intended to prohibit or hinder the registration or the issuing of registration certificates by said Precinct Registrar to negroes, including plaintiff I. W. Lane, and this defendant denies that he has, at any time, entered into a conspiracy or pact with County or Precinct Registrars for the purpose of hindering the registration of negroes of Wagoner County.

5. This defendant further denies that plaintiff has been damaged in the sum of five thousand (\$5000) dollars, or any other sum, by reason of the acts of this defendant.

6. Having thus made full answer to all the matters and things contained in plaintiff's petition, seeking to complain of this defendant, this defendant prays that the petition of plaintiff be dismissed as to this defendant and that he have judgment for his costs in this behalf incurred.

JOHN MOSS,
Defendant.

Filed Jan. 12, 1935. W. V. McClure, Clerk.

(Caption omitted.)

Reply of Plaintiff to the Joint Answer of Defendants, Jess Wilson and Marion Parks.

1. I. W. Lane, the above named plaintiff, shows to the Court that the joint answer of the defendants, Jess Wilson and Marion Parks, was and is filed irregularly and out of time, and not within the time ordered by the Court, and for said reason, said purported answer should be stricken from the files of this Court, and judgment should be rendered in favor of this plaintiff and against the defendants, Jess Wilson and Marion Parks.

2. For his reply to said joint answer of said defendants, the plaintiff denies each and every material allegation of said joint answer, except such as reallege or admit the allegations of plaintiff's petition.

3. And said plaintiff realleges that this action involves

an amount, exclusive of interest and costs, in excess of \$3,000.00; and further realleges that this action involves a Federal question; plaintiff realleges that he is and has been a citizen and resident of Wagoner County, Oklahoma, as alleged in his petition. And plaintiff further realleges that he is and was, as stated in his petition a qualified elector of the State of Oklahoma, and entitled to be registered, particularly as stated in his said petition.

4. Plaintiff realleges that he was denied by the defendants, fundamental and constitutional rights during the registration period next preceding the general election of November 6, 1934.

5. Plaintiff realleges that during the first registration period after 1916, and at each subsequent registration period as stated in plaintiff's petition, plaintiff made application for registration; and plaintiff realleges that the defendants and their predecessors conspired to and did deprive plaintiff of his right in the premises.

6. And plaintiff realleges that the registration laws mentioned in his said petition are unconstitutional, violative of the Constitution of the State of Oklahoma and of the United States, and are void, unjust and discriminatory and that said laws are mere subterfuges aimed exclusively and directly at Negro citizens of the United States and of the State of Oklahoma, and against this plaintiff.

7. Further, that the acts of said defendants under color of said election laws are illegal and wrongful.

8. And further specifically replying to the second paragraph of page six of said answer of said defendants, plaintiff admits that the above mentioned registration laws provide for an appeal to the District Court of Wagoner County, to have reviewed the action of which he complains, and by said law it appears that an appeal would lie from the District Court of said County to the Supreme Court of Oklahoma. And further replying to said paragraph, plaintiff alleges and shows that the pretended remedy of appeal provided for by said illegal registration laws are a phase of the sham and subterfuge to give said illegal laws the color and appearance of due process of law and of constitutionality. That under said laws and pretended remedies, it is and has been practically impossible for this plaintiff to obtain any relief be-

cause the time provided is so short that even upon the most expeditious hearing, the particular election would be over before plaintiff could obtain any effectual relief, and the question of plaintiff's rights would become moot.

9. Plaintiff further alleges that in Wagoner County, Oklahoma, where said defendants have held proceedings involving the rights of franchise of Negro citizens of the United States, such proceedings have been attended by such gross and rank irregularities as to give same the appearance more of a farce than of a judicial proceeding; that in such proceedings had in Wagoner County, during the month of November, 1934, involving the rights of Negro citizens under said registration laws, the defendant, Jess Wilson, acting as County registrar, and the defendant, John Moss, acting as co-conspirator to said Jess Wilson in said matter, denied to Negroes, parties to said proceedings, the right to cross-examine purported witnesses produced by said defendants, and denied to said Negro citizens the right either to appear or to be heard by counsel, or to produce witnesses on their behalf.

10. Further, this plaintiff denies that he has waived any of his constitutional rights under said registration laws, if ever under said laws he had any rights; and denies that he should be deprived of the right to be heard in this Court.

11. Further, specifically replying to the allegations set forth in the first and second paragraphs of said defendants' answer, this plaintiff shows that the purported classification of electors mentioned in said paragraph of said defendants' answer is violative of the Constitutions of the State of Oklahoma and of the United States, and also violative of the 14th and 15th Amendments to the latter Constitution; and that said purported classification is illegal, unconstitutional and void, and one of the means calculated by said registration laws to deprive Negro citizens in general, and this plaintiff in particular of their rights and his constitutional rights.

13. And specifically replying to the last paragraph of page 7 of said answer, plaintiff alleges that said paragraph commencing with the words "Defendant alleges etc.", and ending with the words "Which they plead is unconstitutional and without force and effect", is redundant and argumentative, and should be stricken from said answer, and further that the alleged unconstitutional registration laws mentioned

in plaintiff's petition, and the acts of the defendants pursuant to the conspiracy therein complained of, are part and parcel of the same illegal scheme to deprive Negro citizens in general, and this plaintiff in particular, of their right and his rights under the Constitution and laws of the United States.

Wherefore, having fully replied to said answer of said defendants, this replying plaintiff renews, by reference thereto, the prayer which he makes in his said petition. Dated, January 22nd, 1935.

I. W. LANE,

Plaintiff.

By CHARLES A. CHANDLER,

C. E. ROBERTSON,

Attorneys for Plaintiff.

Filed Jan. 22, 1935. W. V. McClure, Clerk.

(Caption omitted.)

Reply of Plaintiff to Separate Answer of Defendant,
John Moss.

1. I. W. Lane, the above named plaintiff, shows to the Court that the separate answer of the defendant, John Moss, was and is filed irregularly, out of time, and not within the time ordered by the Court, and for said reason said purported answer should be stricken from the files of this Court, and judgment should be rendered in favor of this plaintiff and against the defendant, John Moss.

2. Further, for his reply to the separate answer of said defendant, John Moss, the plaintiff denies each and every and all and singular the material allegations of said separate answer, except such as reallege or admit the allegations of plaintiff's petition.

3. Further, specifically replying to paragraph #3, page 2, of the answer of said defendant, John Moss, plaintiff realleges the averments of his petition quoted by said defendant in said paragraph #3, page 2; further, plaintiff denies that the defendant, John Moss, has no knowledge of said allegations, and denies that said defendant believes said allegations to be not true. And in this connection plaintiff alleges

that said defendant, John Moss, has, and at the time mentioned in said petition of plaintiff, had full knowledge of the facts and things stated in said quoted part of plaintiff's petition.

4. Further, specifically replying to paragraph #4, page 3 of the answer of said defendant, plaintiff realleges that the defendant, John Moss, was a party to the conspiracy mentioned in plaintiff's petition, and was an active participant in, and movant of the acts and conduct of his co-defendants, Jess Wilson and Marion Parks, calculated and intended to prohibit and hinder the registration of Negro citizens, including particularly this plaintiff.

Wherefore, having fully replied, said plaintiff repeats and renews, by reference thereto, the prayer which he makes in his said petition.

Dated this 22nd day of January, 1935.

I. W. LANE,

Plaintiff.

By CHARLES A. CHANDLER,

C. E. ROBERTSON,

Attorneys for Plaintiff.

Filed Jan. 22, 1935. W. V. McClure, Clerk.

(Caption omitted.)

Verdict.

We, the jury in the above-entitled cause, duly empaneled and sworn, upon our oaths, find the issues in favor of the defendants and against the plaintiff.

J. J. Ammons,

Foreman.

Filed in open court Apr. 20, 1937. W. V. McClure, Clerk.

(Caption omitted.)

Motion for New Trial.

The above-named plaintiff, I. W. Lane, respectfully prays this Honorable Court to vacate and set-aside the order of said court, made on the 20th day of April, 1937, whereby the trial of said cause was taken from the jury and a verdict ad-

verse to plaintiff was ordered and directed by the court; to set-aside said adverse verdict and the order of the court thereon, and to grant said plaintiff a new trial herein, Plaintiff alleges and shows the following grounds and reasons in the premises, to wit:

1. During the trial of said cause the Honorable Trial Judge committed errors of law, prejudicial to the rights of said plaintiff, to which plaintiff did then and there object and except.

2. During the trial of said cause it was established, and not controverted, that in Wagoner County, Oklahoma, where of a total population of 22,428 inhabitants 6753 were Negroes (U. S. Official Census, 1930), during the 20 years next preceeding trial of this cause the officials of the State of Oklahoma, administering the 1916 Registration Laws of said State (O. S. 1931, Sec. 5654), permitted only TWO Negro citizens of the United States to register and qualify as electors, although many Negro citizens of the United States, including plaintiff Lane, residing in said County were duly qualified otherwise. This clearly established an abridgment and denial of the right to vote, on account of race and color; and also a violation of the 15th Article on Amendment to the Constitution of the United States. And the trial court erred in holding and instructing the jury that said Registration laws were valid and not unconstitutional, to which plaintiff objected and excepted.

3. It appearing from the face of the Oklahoma Registration laws of 1936 (O. S. 1931, Sec. 5654) that said law is an attempted revitalization of the illegal grandfather clause, Art. III, Sec. 4a, Oklahoma Constitution, Sec. 13450, O. S. 1931; or the same invalid law in a new disguise of words, and having the same discriminatory and unconstitutional intent, operation, and effect, being violative of the 15th amendment to the Constitution of the United States, the Honorable Trial Court erred in holding and adjudging, and in instructing the jury in said cause that said laws were and are valid and not unconstitutional, to which plaintiff duly objected and excepted.

4. The said Registration Laws of the State of Oklahoma, (O. S. 1931, Sec. 5654), as made and enforced by the State, abridges the privileges and immunities of plaintiff Lane and of other citizens of the United States of his color and similar-

ly situated, deprives them of liberty and property without due process of law, and denies them the equal protection of the laws; said Registration Laws are violative of the 14th Article of Amendment to the Constitution of the United States. The trial court erred in holding, adjudging, and in instructing the jury that said laws were valid and not violative of the said 14th Amendment.

5. It appearing that there was abundant evidence to establish that the plaintiff Lane was duly qualified to be registered and to vote as an elector in said State at the times in question, and that the defendants had, acting jointly and severally, wrongfully prevented his registering or voting, the cause should have been submitted to the jury under proper instructions from the court; and in refusing so to submit said cause to the jury with proper instructions, the trial court committed error prejudicial to the rights of plaintiff, to all of which plaintiff then and there saved exceptions.

Wherefore, said plaintiff, I. W. Lane, respectfully prays this Honorable Court to vacate and set aside said order, verdict and judgment rendered and made in said cause, and to allow said plaintiff a new trial herein.

Dated this 23rd day of April, 1937.

I. W. LANE,

Plaintiff.

By CHARLES A. CHANDLER,

CECIL E. ROBERTSON,

Attorneys for Plaintiff.

Filed Apr. 23, 1937. W. V. McClure, Clerk.

(Caption omitted.)

Journal Entry.

This cause came on for trial at Muskogee, Oklahoma, on the 19th day of April, 1937, in term time of this Court, the plaintiff, I. W. Lane, appearing in person and by his attorneys Charles A. Chandler and C. E. Robertson, the defendants appearing in person and by their attorneys, Charles G. Watts, Gordon Watts, and Joseph C. Stone.

And thereupon the Court heard the motion of the defend-

ants to require the plaintiff to elect whether he would assail and challenge the Oklahoma statutes which provide for the registration of electors, upon the alleged ground of unconstitutionality, or rely upon the statutes. And the Court being duly advised, said motion was overruled, to which ruling the defendants and each of them excepted. And a jury was duly empaneled and sworn in the cause.

And thereupon the defendants and each of them objected to the introduction of any evidence upon behalf of the plaintiff, upon the alleged ground that plaintiff's petition fails to state a cause of action against the defendants, or either of them, which objection was, by the Court overruled, to which ruling the defendants and each of them excepted. And the evidence upon behalf of the plaintiff was heard.

Whereupon the defendants and each of them demurred to the evidence upon behalf of the plaintiff, upon the ground that the evidence did not establish facts sufficient to constitute a cause of action against the defendants or either of them, which demurrer to the evidence was by the Court overruled, to which ruling the defendants and each of them excepted.

And the trial of the cause having continued until the 20th day of April, 1937, and the defendants having introduced their evidence, and the plaintiff having introduced his rebuttal evidence, and all the evidence having been heard fully by the Court, the parties rested. Thereupon the defendants and each of them moved for an instructed verdict in favor of the defendants and against the plaintiff, which motion, having been heard by the Court, was sustained, to which ruling the plaintiff excepted.

And the Court having instructed the jury to return a verdict against the plaintiff and in favor of the defendants, the jury on the 20th day of April, 1937, returned the following verdict, to-wit:

“VERDICT—We the jury in the above-entitled cause, duly empaneled and sworn, upon our oaths, find the issues in favor of the defendants and against the plaintiff—(Signed) J. J. Ammons, Foreman.”

To which verdict the plaintiff excepted, and exceptions were allowed him. Whereupon the verdict was duly filed on said date, in open court.

And the plaintiff having filed his motion for a new trial, which motion came on for hearing on this the 9th day of June, 1937, a day in term time of this Court, the parties appearing by their respective attorneys of record, and the Court being duly advised,

It Is, on this the 9th day of June, 1937, Ordered, Adjudged and Decreed that the plaintiff's motion for new trial be and the same is hereby overruled, to which the plaintiff excepts, and exceptions are allowed him.

And the verdict of the jury having been examined and considered by the Court, It Is Ordered, Adjudged and Decreed that said verdict be and the same is hereby approved to which the plaintiff excepts, which exceptions are allowed.

Wherefore, on this the 9th day of June, 1937, It Is Further Ordered, Adjudged and Decreed that judgment be and the same is hereby rendered and entered for the defendants and each of them, and against the plaintiff, and It Is Adjudged and Decreed that the defendants go hence without day and that they recover their costs herein from the plaintiff, for which costs let execution issue after (30) days from this date. To all of which the plaintiff excepts, which exceptions are allowed.

And thereupon in open court the plaintiff gave notice of his intention to appeal to the United States Circuit Court of Appeals for the Tenth Circuit.

Done in open court this 9th day of June, 1937.

ALFRED P. MURRAH,

Judge.

Filed in open court Jun. 9, 1937. W. V. McClure, Clerk.

(Caption omitted.)

Bill of Exceptions.

Be it remembered that on the 19th day of April, 1937, a regular term day of the District Court of the United States for the Eastern District of Oklahoma, the above entitled and numbered cause came on for trial at Muskogee, Oklahoma, before the Honorable Alfred P. Murrah, Judge.

The plaintiff, I. W. Lane, appeared in person and by his

attorneys, Charles A. Chandler and C. E. Robertson: The defendants, Jess Wilson, John Moss, and Marion Parks, appeared in person by their attorneys, J. C. Stone and Watts & Watts.

A jury was duly empaneled and sworn and the trial proceeded.

In open court the defendants, by their counsel, objected to the introduction of any evidence, in the following words:

"Come now defendants, and each of them, and object to the introduction of any evidence on behalf of the plaintiff for the reason that the plaintiff's petition does not state facts sufficient to constitute a cause of action against the defendants or either of them, nor does the petition state facts sufficient to entitle plaintiff to any relief. By The Court. Overruled at this time. By Mr. Stone. Note our exceptions." (Page 2)

Evidence on Behalf of Plaintiff.

The plaintiff, I. W. LANE, was called as a witness for plaintiff, and having been first duly sworn, testified, substantially, as follows:

That witness, I. W. Lane, was approximately 70 years of age; was born in Talladega County, Alabama, and has lived in Oklahoma over 29 years. That witness lives in the town of Red Bird, Wagoner County, Oklahoma, and has lived there since 1908. (Page 1)

That witness voted in Alabama, and in Oklahoma in 1910 and in 1912, but that witness has not voted since said time. That in every election year witness has made application for registration, but that witness did not vote after 1912 because witness could not get registered. (Page 2)

"Was there a law in Oklahoma that prevented you from voting?

By Mr. Stone: Objected to as incompetent, I doubt that the witness is qualified to state there was a law and can state what the law is. This witness is invading the province of the court."

Examination by Mr. Robertson Resumed.

"Why didn't you vote after 1912?

By Mr. Stone: Object to as incompetent. Irrelevant and immaterial.

By The Court: Overruled.

By Mr. Stone: Note our exceptions."

After the above proceedings said witness proceeded to testify: That witness did not vote after 1912 because in 1914 there was in operation the grandfather clause; and in 1916 there was the registration law, under which witness could not register. That witness made application for registration in 1916, and at the time witness had been living in Oklahoma since 1908; had lived in the precinct where witness now lives, and in Wagoner County more than six months. That plaintiff at said time lived in Gatesville precinct No. 1, where witness has lived ever since he has been in Wagoner County. (Page 4)

That witness has never been convicted of a felony, nor served a term in the penitentiary, nor been an inmate of a poor house or public prison, nor adjudged insane. (Page 4) That in 1916 the registrar was a man named Workman. That when witness applied to said Workman for registration, said Workman stated that he did not have the registration books—He said he had had them but had returned them. (Page 5) That witness in 1916 made only one application to Mr. Workman for registration. Some of the boys that were with witness went over there: and it seems that a Mr. Dennison had the books. (Page 6)

That in 1918 the registrar was, as far as learned by witness, a Mr. Atterberry, whom witness told "We come to register", and he replied that he did not have any order to register colored people. That witness in 1920 made application for registration to the same Mr. Atterberry, who seems to have held the office for two years, and at this time the reply of said Mr. Atterberry was that he did not have any orders to register colored people, but would have to see the County Registrar before he could do anything about it. That witness went to said registrar during the registration period. That witness tried to register in 1922, and again in 1924, and during every year. (Page 8)

That just before the general election in 1934, while the registration books were open, witness, accompanied by four others, went before Marion Parks, defendant, and told him

that witness and said parties desired to be registered; but that said Parks replied, "Well, I was instructed by the higher-ups not to register any colored people". That Parks stated the higher-ups were Jess Wilson, County Registrar, and John Moss, County Judge. That Parks did not register plaintiff nor give him a registration certificate. That the persons with said witness at the time of said application were Washington Taylor, J. M. Jackson, H. A. Cullam and Jim Ellis. (Page 10)

That during these times when witness attempted to find the registrars, witness always had trouble locating them—"couldn't hardly find them anytime". The nature of the difficulty would be that the registrar had gone away from home. Witness would have to return three or four times, sometimes about sun-up or sun-down. That when witness would locate said registrars they would tell witness that they did not have any orders to register witness.

That in 1934 witness spoke to the County Registrar, Jess Wilson, defendant, about the refusal of precinct registrars to register witness. That witness had looked for a precinct registrar for three or four days and could not find one. Then witness went to said Mr. Wilson and inquired who had been appointed as precinct registrar. That Wilson replied that at the time he had not appointed a registrar (for said precinct) but that he would within a day or two. That witness requested said Wilson, as County Registrar, to register witness but that Wilson replied that the County Registrar could not register anyone—that a person had to register at the precinct. That at that time the registration books had been open three or four days. That said books opened twenty days before an election and closed ten days before the election. (Page 12) That several other persons went with witness when he interviewed said Mr. Wilson, County Registrar.

That a day or so after witness saw Mr. Wilson, witness received information that the defendant, Parks, was Precinct Registrar; and witness went immediately to said Mr. Parks and requested of him registration; that Mr. Parks stated he hoped witness would not think hard of him; Parks did not ask witness nor his companions, anything, nor did he ask if witness were a qualified elector.

On Cross Examination by Mr. Stone, this witness testified, substantially, as follows: That since 1916 witness has

gone to the polls and offered to vote. Witness cannot recall the exact year, but he so offered to vote in Fussy Creek, where an election was held. Witness does not remember asking leave to vote in 1934 after the registration period; but that witness did ask leave to vote, about the year 1920.

That witness knows James L. Pace, who now lives in said Gatesville Precinct No. 1, but that witness did not apply to him for registration in the year 1916. (Page 15)

That following failure of witness in 1934 to get registered, witness did not appeal to the District Court of Wagoner County, Oklahoma, from the decision of the registrar, but that witness appealed to this court (by this action). That in a former action in this court (involving plaintiff's rights under the 1916 registration laws) and also in former trial of this instant cause, the Honorable Robert L. Williams, Judge, read from said 1916 registration laws as follows:

"Such action may be reviewed by the District Court of the County by the aggrieved elector by his filing within ten days, with the Clerk of said Court, his petition, whereupon summons shall be issued to said registrar, requiring him to answer within ten days and the District Court shall give an expeditious hearing, from his judgment an appeal will lie at the instance of either party to the Supreme Court of the State as in civil cases." (Page 17)

J. A. CULLAM was next called as witness on behalf of plaintiff, and having been first duly sworn, testified, substantially, as follows: That witness lives in Gatesville Precinct No. 1, Wagoner County, Oklahoma, and has lived there something like 25 years. That witness is a taxpayer in the County. That witness has voted in Oklahoma, in Muskogee County, about 1906, 1907 or 1908.

That witness removed from Muskogee, about 1909. That witness did not vote in 1916. That witness went to a registrar, about 1916, to the best of his recollection, making application for registration to a Mr. Atterberry and a Mr. Workman. (Page 22) That neither gave to witness a registration certificate: that said Mr. Atterberry told witness that Mr. Moss, then County Attorney, told him not to register any colored people until he was further instructed. And that said

Mr. Workman told witness the same thing. That neither asked questions about the qualification of witness. That said registrar told witness that he was told not to register any colored people. That witness had not voted since 1916. (Page 25) That witness made application for registration in 1918; believes he made application to everybody that had the registration books. Witness cannot recall who the registrar was in 1918.

That witness made application for registration in 1934—he believes to Mr. Parks and Mr. Lawrence. That witness made application to Marion Parks for registration, but does not remember the exact date. That witness went to see Mr. Parks before going to see Mr. Lawrence. That he went with plaintiff Lane and was accompanied by two or three others whose names witness does not remember. (Page 29)

That witness and others requested Mr. Parks to register them. That Mr. Parks replied that the higher-ups had told him not to register any colored people. That this conversation took place during the registration period of 1934, at Park's house, while the registration books had been open. That Parks stated that Mr. Wilson and Mr. Moss gave him these instructions about not registering colored people. That witness never talked to either Mr. Wilson or Judge Moss about this matter.

On Cross Examination, by Mr. Watts, the witness, Culam, testified, substantially, as follows:

That witness first voted in Muskogee County about 1906, 1907, or 1908; that in 1906 witness was living on Fourth Street in the City of Muskogee, and voted in the city election, probably before statehood. That witness went to Wagoner County in 1909, but did not vote there. That witness and others were prevented by the grandfather clause from voting, but witness does not remember how the registration ran about that time. That in 1916 witness applied to Workman, as Precinct Registrar in Gatesville Precinct No. 1, for registration; and, if witness remembers, he went to see Mr. Atterberry the same year. Mr. Atterberry said that John Moss would tell him, give him further instructions how to register colored people, but to go ahead and to register white people. (Page 32)

That witness does not think he applied to Mr. Pace as

registrar at said time; that witness and others started to see Mr. Pace, but someone told them it was no use.

That witness remembers that the registration law was passed immediately after the grandfather clause; and immediately after that law, witness applied to Mr. Workman and to Mr. Atterberry. That witness applied for registration to every registrar, excepting possibly, Mr. Pace. That witness is not positive that the registration law was passed in 1916. That witness started down to make application to said Mr. Pace and was told that he was not registrar. That witness knows Mr. Pace.

That in 1934 witness made application for registration to Mr. Parks, and, after that, to a Mr. Lawrence, who witness thought was county man (County Registrar). That witness first went to see Mr. Parks who told witness that he could not register witness because the higher-ups told him not to. That the higher-ups were John Moss and Jess Wilson, the County Registrar. It must have been during the preceeding election when witness applied to the Mr. Lawrence. That witness went to see Jess Wilson, but never did get to see him.

That Parks was Precinct Registrar of Gatesville Precinct No. 1; and witness was accompanied by Mr. Lane, Joe Johnson, Washington Taylor, and Morris Allen. That witness cannot remember the day or the month. That Mr. Parks was called out of his home about dark and Mr. Lane inquired if he was registrar, to which Mr. Parks replied that he was. That Lane asked him to register him, but Parks replied that he could not register us: that the higher-ups told him not to register colored people; and Parks said the higher-ups were Mr. Moss and Mr. Wilson. That witness did not go to see Mr. John Moss. Witness did not ask the registrar to register witness: only Lane did the talking then.

WASHINGTON TAYLOR, called as witness for plaintiff and having first been duly sworn, testified, substantially, as follows:

That witness lived in the town of Red Bird, Oklahoma, and has lived there about thirteen years; but has lived in the State of Oklahoma since about 1910, or about 27 years. That witness knows plaintiff Lane in this case. That in the 1934 election witness made application to Marion Parks as regis-

tration officer, same being during the registration period before the election; and while the registration books were open. That witness was accompanied by plaintiff Lane, one Ellis, J. M. Jackson, and Mr. Cullam. That Lane inquired of Parks if he were registrar, and Parks answered that he was and stated, "Boys, I hate to tell you, but the higher-ups told me not to register no colored people". And Mr. Parks stated that the higher-ups were Judge Moss and Mr. Jess Wilson. That Mr. Parks did not register Lane nor any of the others, although they asked him to register them. That Mr. Parks did not ask any questions about the qualifications of said applicants.

That witness has lived in Wagoner County, Oklahoma, since 1910, but has never voted in Oklahoma. That witness did not in 1916 speak to anyone about being registered. (Page 40)

On Cross Examination by Mr. Stone, said witness testified, substantially, as follows: (41)

That witness testified before in a trial of this case on or about January 14, 1935, at which time witness did not use the word "higher-ups", he just called the names (Mr. Moss and Mr. Wilson): Mr. Parks said "higher-ups" and that would mean Mr. Moss and Mr. Wilson. That on a former trial, counsel (Mr. Stone) did not ask witness anything about higher-ups.

That witness has not been training for this trial, and no one had refreshed the memory of witness about the higher-ups. (42)

J. M. JACKSON, called as witness for plaintiff and being first duly sworn, testified, substantially, as follows:

That witness lives at Red Bird, in Wagoner County, and has lived there about 28 years. That witness lives in election precinct, Gatesville No. 1. That witness has never voted in Oklahoma since the year 1911, as witness believes the date was.

That witness knows I. W. Lane, and in 1934 went with Lane, Taylor, Cullam, and Ellis to Mr. Parks. That Lane told Mr. Parks that he came to get registered, but that Mr. Parks stated that he was sorry, but he had been instructed

not to register any colored people. Mr. Lane inquired of Mr. Parks who had so instructed him. Parks told Lane that the higher-ups had so instructed him. Parks told Lane that the higher-ups were Mr. John Moss and Mr. Jess Wilson. That witness and companions were together at said time when application for registration was made, but that Mr. Parks did not register any of them. That Mr. Parks asked something about the qualification of said applicants—they talked about it, but witness cannot repeat what was said. That witness did not see anyone else about getting registered: he did not go any further. (45)

On Cross Examination by Mr. Stone, the witness testified, substantially, as follows:

That witness testified on former trial of this case but did not use the word "higher-ups", said word not being asked for. Witness has related the conversation between Marion Parks just as it occurred: witness just answered what was asked. That witness did not consider the word "higher-ups" the main part of the story. That witness has talked to the lawyers about the case, but not about what his testimony would be at this time. That witness has talked to said lawyers from time to time. At the command of the court, the testimony of witness upon former trial was read from transcript thereof as follows, to wit:

"Do you recall what Mr. Lane said to Mr. Parks? Well, he told him we came over to register. What did Mr. Parks say? Well, Mr. Parks said he couldn't do it; he had been advised not to register any colored people. Did he say who had advised him? Yes, sir, he said that Mr. John Moss and Mr.—the registrar, I can't just call his name."

That witness now remembers the use of the word, "higher-ups", because witness has thought more about what Parks said. (47)

On Re-direct Examination, the witness testified, substantially, as follows:

That the lawyers talked to witness about this case, but did not advise in any way how witness should testify.

And on behalf of Plaintiff there were introduced in evidence Volumes 1 and 2 of the Registration Records of Wag-

oner County, Oklahoma, showing the list of electors registered, over the registration periods from 1916 down to date, for the specific purpose of showing the number of Negroes registered during the periods, and to show the number registered whose names were stricken from the record. (T 51)

"By Mr. Stone, counsel for Defendants: It is agreed, upon our part, that these are the records, they may be offered without proof of authenticity, but we object to the offer upon the grounds that the evidence is immaterial, incompetent and irrelevant, and in support of the objections we invoke the rule which generally prevails, as stated in 148 Federal Reporter, page 513. * * *

In the case of Grainger vs. Douglas Park Jockey Club, decided by the 6th Circuit Court of Appeals, the rule being just announced: 'The constitutionality of a statute must be determined by its provisions and not by the manner in which it is in fact administered.'

By The Court: Overruled.

By Mr. Stone: Do we go into the whole manner of administration of law in Wagoner County? It has nothing to do with these persons, how they administered the law. He is undertaking to establish the whole effect of the proceedings throughout Wagoner County during the whole period from 1916 up to date: and against that the defendants object.

By The Court: I am familiar with that rule.

By Mr. Stone: Nor have they introduced evidence, your Honor, to connect these defendants with any maladministration of the law throughout this period. These defendants are on trial for the particular act alleged with respect to 1934. * * * I, therefore, now move that the allegations of his petition, insofar as they seek to show, the practice in Wagoner County, Oklahoma, whereby it is alleged and claimed that Negroes were barred from registering, be stricken. (53)

By The Court: Overruled at this time.

By Mr. Stone: Note our exceptions.

By Mr. Chandler: I have already offered it for that purpose. Of course, these being public records, I wish

leave to dictate these parts into the record and withdraw these.

By Mr. Stone: That is all right.

By Mr. Chandler: We are not claiming damages on that, but it goes to the operation of the statute. . . .

By Mr. Stone: Or, you may do this if it is agreeable, state the general results of this, if you have counted the names subject to our objections, and let the reporter take the books and copy into the record.

By Mr. Chandler: Now, subject to the objection of counsel for the defendants, these records, Volumes 1 and 2 of the Registration Records of Wagoner County, Oklahoma, for the registration periods commencing in 1916, down to 1936, reveal this result: during the registration period of the year 1916 there were registered in Wagoner County eleven Negro electors; that there was no further registration of a Negro elector, as shown by said records, until 1926; that in 1926 there was one Negro recorded registered. Then, in 1928, there was one Negro registered in Wagoner County; then, from 1928 down to 1934 there was not a single Negro registered in Wagoner County, as shown by these records. And in 1934, at the time of which this plaintiff Lane is complaining, and at the time Jess Wilson was the registrar in Wagoner County, there were registered in said Wagoner County fifty Negro electors; and said County Registrar, Jess Wilson, struck the names of fifty Negro electors from said records. (55)

By Mr. Stone: To save the record, we move that the evidence be stricken on the grounds that it is incompetent—does not tend to throw any light on the issues now on trial.

By The Court: Overruled, subject to the same qualifications.

By Mr. Stone: Exceptions."

At the request of counsel for plaintiff, the reporter marked for identification plaintiff's exhibit #1, being a transcript of proceedings had in 1934 before Jess Wilson, County Registrar, Wagoner County, Oklahoma, to which transcript coun-

sel for defendants, Mr. Stone, agreed upon the authenticity of the document but not as to its validity.

"By Mr. Stone: We object to this offer, your Honor, as incompetent, irrelevant and immaterial; it has no bearing upon the issues here on trial and while I see nothing irregular about it—it appears to us in accord with the law. If there were any irregularities in that proceeding it has nothing to do with this case—with the rights of the parties herein.

By The Court: Overruled. It is admitted in the same manner and with the same conditions and qualifications as the preceding exhibit.

By Mr. Chandler: Your Honor, please, I ask to introduce this transcript also generally on the merits of our controversy because it shows the purpose of Judge Moss, County Judge, on these proceedings which we claim were invalid and pursuant to the conspiracy.

By Mr. Stone: I object to that.

By The Court: Overruled. Same qualifications."

(This Exhibit No. 1, as to its material parts, is set forth in the Appendix hereto attached as part hereof.)

"By Mr. Chandler: Your Honor, I have here, Department of Commerce Report, fifteenth (15th) census of the United States of 1930, * * * showing the 1930 Census, especially Table 21, page 67, and showing the population of Wagoner County by whites, by Negroes, and total population; and the population of the various townships of Wagoner County.

By Mr. Stone: Objected as not material and has no bearing upon this case.

By The Court: Overruled.

By Mr. Stone: Note our exceptions.

By Mr. Chandler: I would like leave of the court to supply photostatic copy of this one page and withdraw the document."

To which no objection was interposed and permission was granted. Said census report was then introduced in evidence, as Plaintiff's Exhibit #2, same showing, omitting unnecessary parts, the following:

Plaintiff's "Exhibit No. 2."

Composition and Characteristics.

Table 21—Population by sex, color, age, etc., for counties by minor civil divisions: 1930—Con.

County and Minor Civil Division	Total population	Sex		Color	
		Male	Female	White	Negro
Wagoner County.....	22,428	11,600	10,828	14,893	6,753
Adams Creek township. . .	1,371	751	620	1,091	181
Blue Mound township.....	1,636	872	764	1,245	294
Cherokee township.....	364	188	176	321
Coal Creek township.....	1,367	721	646	1,083	256
Coweta town.....	1,274	624	650	1,038	173
Coweta township.....	404	210	194	369	11
Creek township.....	1,524	784	740	1,131	315
Gatesville township.....	2,335	1,222	1,113	1,388	920
Lone Star township.....	1,064	574	490	1,006	51
Okay town.....	248	129	119	165	54
Porter town.....	525	288	237	419	106
Porter township.....	1,885	967	918	925	939
Redbird town.....	218	105	113	218
Shahan township.....	1,166	608	558	708	406
Shannon township.....	1,115	596	519	570	505
Stone Bluff township.....	918	481	437	735	131
Tallahassee town.....	164	78	86	10	154
Tallahassee township.....	1,856	952	904	298	1,537
Wagoner city.....	2,994	1,450	1,544	2,391	497

"By Mr. Chandler, counsel for plaintiff: Now just one more request, your Honor. Since I am submitting these (Registration) Records to the court and not the jury, I wish the court also to peruse these so as to see the varying ages of these people who are registered, as the matter of age becomes important in the administration of this statute.

By The Court: I see."

(The summary of said ages, as shown by said records, is set forth in Appendix hereto, and marked, "Exhibit No. 3.")

Pursuant to a stipulation of the parties, plaintiff Lane was recalled for further re-cross examination by Mr. Stone,

counsel for defendants, and upon re-cross examination plaintiff Lane testified, substantially, as follows:

That witness is plaintiff in this case, and does not know the exact population of the town of Red Bird, Oklahoma, population thereof being approximately two or three hundred people. That said town is incorporated as a town and not as a city. That plaintiff has not appealed to the District Court of Wagoner County from any of the rulings of the several registrars (refusing registration to plaintiff).

On Re-direct Examination, plaintiff Lane testified that not any white people lived in Red Bird, Oklahoma. That six or seven years ago plaintiff was mayor of said town of Red Bird.

At this point counsel for plaintiff announced in open court that plaintiff did rest.

"By Mr. Stone: We wish to renew without extended argument, our motion to require (plaintiff) to elect, because there is a possibility at least, it might be held this is a proper time to present the motion. * * *

We will follow that motion by demurrer to the evidence and I want to refer to one case that has been cited here, which we have examined carefully, in order to distinguish from the line of authorities we relied upon. That is the case of Meyers vs. Anderson. I now renew my motion to require him to elect, without further argument.

By The Court: I will overrule that at this time.

By Mr. Stone: Note our exceptions.

By Mr. Stone: Come now defendants and each of them and demur to the evidence on behalf of the plaintiff upon the grounds that the evidence does not sustain or support or establish a cause of action against defendants or either of them.

By The Court: Overruled.

By Mr. Stone: Exceptions."

Evidence on Behalf of Defendants.

JAMES L. PACE, being called as a witness for defendants, and having been first duly sworn, testified, substantially, as follows: (Direct Examination by Mr. Stone.)

That witness lives at Council Hill. That in 1916 witness lived in Gatesville, Precinct No. 1, in Wagoner County, Oklahoma. That witness was Precinct Registrar in said Precinct for the year 1916, and for the whole year, there being no other registrar in said precinct at that time, witness being registrar for the entire registration period. That witness knows plaintiff Lane, and that said Lane did not in 1916 present himself to witness for registration. (60)

On Cross Examination witness Pace testified, substantially, as follows:

That witness did not register any Negroes in 1916; that no Negroes applied to witness in 1916 for registration, and that witness did not refuse any Negroes registration.

That the County Registrar for Wagoner County in 1916 was one Noah Watts, who appointed witness as Precinct Registrar in the spring of 1916, witness not remembering the specific time; and said County Registrar had witness to sign the legal form (in connection with being appointed Precinct Registrar). That in 1916 witness had only a passing acquaintance with plaintiff Lane, and can remember distinctly that twenty-one years ago said Lane did not apply to witness for registration. That witness registered all Negro voters who applied in that precinct; but does not remember how many Negroes witness registered.

S. T. DENISON, called as a witness for defendants, and being first duly sworn, testified, substantially, as follows: (Direct Examination by Mr. Stone.)

That witness has lived in Porter, Wagoner County, Oklahoma, since the 11th day of February, 1937; that in 1916 witness lived in Gatesville Township; Gatesville Precinct #1, in Wagoner County, Oklahoma. That witness believes James L. Pace was Precinct Registrar in that precinct during 1916, and witness believes said Pace registered witness.

Witness produced his Registration Certificate #22, dated the 30th day of May, 1916, signed by James L. Pace, Registrar, showing registration of said S. T. Denison, as testified to. Said certificate was marked "Defendants' Exhibit #1", and was introduced in evidence with no objection from plaintiff. The substance of said certificate being hereinabove set forth, same is not reproduced in this transcript.

On Cross Examination the witness, S. T. Denison, testified, substantially, as follows:

That witness will be seventy-nine years of age on June 14, 1937; that witness lived in Gatesville, Precinct #1, approximately twenty-six years; he does not know who was Registrar in 1918, but that one W. S. Workman was Registrar in 1920. That witness remembers other precinct registrars but does not remember when they served. There were one Atterberry and one Gentry.

CHRISTOPHER COLUMBUS CASEDIER, being duly sworn, testified on behalf of defendants, substantially, as follows:

That witness lives in Gatesville, Precinct #1, in Wagoner County, Oklahoma. That in 1916 witness lived in Gatesville, Precinct #1, at which time Jim Pace was Precinct Registrar. That thereafter witness left and does not know what took place later. Witness produced in court, without objection from plaintiff, his registration certificate #89, for Gatesville, Precinct #1, showing that said witness, Christopher Columbus Casedier, was duly registered as an elector on May 20, 1916, said certificate being signed by James L. Pace, Registrar. By stipulation said certificate was withdrawn. Witness testified that Mr. Pace issued said certificate.

W. M. CHARTIER, witness on behalf of defendants, being first duly sworn, testified, substantially, as follows: (Direct Examination by Mr. Stone): That witness in 1916 lived in Gatesville, Precinct #1, in Wagoner County, Oklahoma, at which time Mr. Pace, neighbor to witness, was Precinct Registrar. That witness does not know that anyone else was registrar in said precinct at said time. That when witness was called to the army in the latter part of 1918, witness lost his registration certificate.

On Cross Examination, witness testified that he did not remember in what specific part of the registration period witness registered; that witness does not know whether Mr. Pace kept the registration books during the entire registration period. That witness knew Mr. Pace was registrar because he

registered witness, there being no other evidence of his authority as registrar.

R. W. BAKER, witness for defendants, being first duly sworn, testified, upon direct examination by Mr. Stone, substantially, as follows. That in 1916 witness lived in Gatesville, Precinct #1, in Wagoner County, Oklahoma, at which time one Jim Pace, and nobody else, to the knowledge of witness, was Precinct Registrar. That said Pace registered said witness but that the registration certificate of witness was burned two years later.

On Cross Examination, the witness testified, substantially, as follows: that witness does not know how long Mr. Pace served as Precinct Registrar, nor does witness remember in what particular part of the registration period he registered.

From the registration record it was read that said R. W. Baker registered May 8, 1916. That witness does not know whether Mr. Pace registered other electors every day or not.

LON LEE, called as a witness for defendants, being first duly sworn, and examined by Mr. Stone, testified, substantially, as follows:

That witness lived in 1916 in Gatesville, Precinct #1, at which time Jim Pace, and nobody else, to the knowledge of witness, was registrar, and registered voters of said precinct. That witness registered in 1916, but, somehow lost his registration certificate.

STOUT ATTERBERRY was called as a witness for the defendant, and, being first duly sworn, testified as follows, (Examination by Mr. Stone): (75)

That witness lives in Gatesville, Precinct #1, Wagoner County, Oklahoma, and has lived there for twenty-five years. That witness registered in 1916, at which time Jim Pace was registrar. That witness was not registrar for the year 1916, and witness does not believe that said Lane applied to witness for registration in said year, 1916.

On Cross Examination, by Mr. Chandler, witness, Stout Atterberry, testified, substantially, as follows:

That witness was registrar in 1920, just before the primary election, but that witness was not registrar for the entire period, said witness having served as registrar for *part* of said period. That the registration books were sent back to witness just before the general election, at which time witness was out working; and wife of witness advised witness that the registration books had come, but witness refused to serve further as registrar. That on that night or the next night, plaintiff Lane and others came to the home of witness to be registered, but that witness did not register them nor anybody else at said time. That the registration books were at home of witness a day or two, but that someone got them while witness was absent. Witness understood later that one Mr. Workman got said books.

On Re-direct Examination, by Mr. Stone, the witness Atterberry, testified:

That witness declined to serve further as registrar in 1920. That witness knows the man referred to as Workman, said Workman having lived about three miles from his home. That witness did not know where said Workman lived at the time of trial, not having seen him for several years. That said Workman was registrar in 1920, just before the general election, said Workman having succeeded witness as registrar. That said time, just before the general election of 1920, was the first time witness knew of said Workman's serving as precinct registrar in said precinct.

On Re-Cross Examination, said witness testified, substantially, as follows: that witness told the jury and court that when Lane came to the home of witness to be registered the registration books were there but that witness had not received them as registrar; that witness did not register anybody, nor did he intend to register anyone. That the books remained there a couple of days, maybe two nights, and witness does not know who was serving as registrar while the registration books were at home of witness.

J. L. PACE, having been previously duly sworn, testified further, being examined by Mr. Stone, as follows:

That witness is the same Mr. Pace who testified previously in this case; that he was precinct registrar at Gatesville,

Precinct #1, in 1916. Upon being shown page 71 from the registration record of Wagoner County, said witness said that it bore the names of a number of registered electors whom witness remembers registering in 1916, some of them having been registered in May of said year and others in November of said year.

At this juncture Defendants introduced, without objections of Plaintiff, pages 31 and 72 and one name at the top of 73, from Volume 1, County Register of Election, Wagoner County, Oklahoma, in connection with the testimony of said witness.

On further Cross Examination, by Mr. Chandler, the witness, Mr. Pace, testified, substantially, as follows:

That witness remembers registering Mr. Puissner, with whom witness was well acquainted, having known him for two or three years. That witness did not know how long Mr. Puissner had been living in said precinct, he being there when witness left. That said Mr. Puissner lived about two miles from witness all the while up to said registration. That on the registration certificates the age of Mr. Puissner was stated as forty-nine years.

That witness does not remember receiving any instructions from the County Registrar as to who was qualified to be registered in 1916, but witness testified that in November, 1916, witness registered Mr. Puissner who was forty-nine years of age, and a full-blood Indian.

Further, that witness registered a Mr. Childers, white, twenty-four years of age.

By Mr. Chandler, counsel for plaintiff:

"While the books are here, I want it stipulated that the ages of these electors registered vary from twenty-one years old up to eighty."

The testimony of one Jim Biggerstaff, who testified in the former trial of this case, was, by stipulation of parties in open court, read in open court as part of the evidence on behalf of defendants. The material substance of this testimony was that witness is in the newspaper business, and has the custody of the files of the Wagoner County Democrat for the year 1916, in bound volume, same being kept as part of the permanent records of said newspaper. That it appears

from said files and records that in said Wagoner County Democrat, of Wagoner County, Oklahoma, for the issue of April 27, 1916, there was published a list of the registration officers for that year, as follows:

"County registrar, Noah Watts has made the following appointments for precinct registrars. [Registrars for other precincts omitted] Gatesville Precinct #1, Jim Pace."

JESS WILSON, one of the defendants, being first duly sworn, testified, substantially, as follows:

That witness is forty-one years of age, lives at the present time in Tulsa County, Oklahoma, but from the 3rd day of June, 1920, until 1935, witness lived in Porter, Wagoner County, Oklahoma. That in 1932 witness succeeded one Ira Lawrence as County Registrar of Wagoner County, and served as such officer from 1932 until 1935.

That witness knows plaintiff, I. W. Lane, having become acquainted with him about 1920. That said Lane came to see witness about registering said Lane, before the general election or the primary election in 1934, at which time there were three or four persons in the crowd with Lane. That Lane inquired who was going to be precinct registrar for Gatesville Precinct #1, and Lane inquired if he had appointed Carl Lawrence; witness told said Lane that said Carl Lawrence had resigned as precinct registrar, but that witness would try to appoint another registrar on that day. That Lane inquired who the registrar would be and witness told Lane that it would be Benny Harmon, if witness could get him to serve. That such was the gist of the conversation with Lane; that Lane did not ask witness to register him; and that witness did not have authority to register anyone. That after this conversation said Lane left and did not return any more. That on the following day witness appointed the defendant, Marion Parks, as precinct registrar in Gatesville, Precinct #1, northwest of Red Bird, Oklahoma; and said Parks, a well known citizen in that community, served as registrar during that period of registration.

That witness did not in 1934, or at any other time, instruct any registrar not to register Negro electors; nor did witness ever enter into any understanding; nor was there any-

thing of the sort discussed, to prevent the registration of colored persons in Wagoner County, nor any other place. That witness did not ever give any instructions to Marion Parks about registering colored people, nor did witness direct said Parks to impede or hinder colored persons in their effort to register.

That on the morning on which witness appointed said Parks as precinct registrar, said Parks came in for the registration book as witness was leaving his office; that witness gave him the registration book and told Parks that Mr. Moss would instruct him in regard to the registration laws. That at said time Mr. Moss was County Judge.

That witness did not have any conversation, nor agreement, nor understanding with Judge Moss as to what instructions he would give to Parks.

That witness had nothing to do with compiling the registration records, such being the duty of the County Clerk. That the only thing done by the witness, with regard to said registration records, was to turn in the registration certificates.

On Cross Examination, the witness, Jess Wilson, testified, substantially as follows:

That while witness was registrar some Negroes were registered. That witness did not move to strike the names of said Negroes from the register—witness was told to have it done, Judge Moss, Frank Young and one Ivan Baldrige having asked for that to be done. That some of the persons whose names were stricken from the registration record were registered by a man named Goddard, whom witness had appointed as registrar. That in a majority of the cases of appointing registrars they were given commissions, but that witness does not believe said Goddard had a commission, said Goddard having been appointed just by oral agreement.

That the names stricken from the registration record were stricken because of a higher decision on the question of the legality of their being competent voters. That witness, as County Registrar, had a hearing, and after summons were had upon them, and upon the evidence showing, said names were stricken off, because in the judgment of witness they were the names of illegal voters. That only four or five, out

of approximately fifty-seven who were summoned, appeared. That witness struck the names off said record after having heard the evidence, basing the findings of witness, as County Registrar, on what he thought the evidence was.

The defendant, JUDGE JOHN MOSS, being first duly sworn, and examined by Mr. Stone, testified on behalf of the defendants, substantially, as follows:

That witness is County Judge of Wagoner County, Oklahoma, and defendant in this suit. That witness has been County Judge since January, 1933; that witness was representative in the Legislature in 1910, becoming County Attorney by appointment on the 21st or 22nd day of December, 1919, that being the first time witness was County Attorney of Wagoner County. That witness was not, as formerly testified in this cause by some witnesses for plaintiff, County Attorney of Wagoner County in 1916. That witness did not, as charged in this case, enter into a conspiracy with anyone to deprive plaintiff Lane or other Negroes in Gatesville, Precinct #1, of their rights or alleged rights to vote; nor did witness enter into any understanding, agreement; conspiracy, or anything of that sort with the defendants, or either of them, in any such manner. That witness did not ever instruct his co-defendant, Marion Parks, in any way whatsoever not to register plaintiff Lane. That witness did not ever instruct said Marion Parks or advise him in any way whatsoever not to register plaintiff or other colored persons.

That co-defendant Parks advised with witness about his duties as registrar prior to his service as such in 1934. That witness had a letter turned over to him by one Jim Biggerstaff, a newspaper man at Wagoner, and witness just read said letter to Mr. Parks and when witness was through reading said letter to Parks witness told Parks that said letter practically stated the law as witness understood it, and as witness had been interpreting it since 1920. That said letter appeared to have been written originally by one Lowe, editor of a newspaper known as "The Lantern", published especially for Negroes and by Negroes. Without any objections, said letter was marked for identification, as "Defendants' Exhibit #2", and introduced in evidence, said letter being as follows:

L. W. LANE V. JESS WILSON, ET AL.

"Headquarters
Negro Democratic State Organization
228 1/2 North Second Street
Muskogee, Oklahoma.

June 20th, 1934

Mr. J. M. Biggerstaff, Editor,
The Wagoner Record
Wagoner, Oklahoma.

Dear Sir:

"A word from one Democratic editor to another--I am, as you will notice, Publicity Director of the Negro Democrats of the state. There has come to my attention that an effort will be made to discredit Negroes of the state in that they are forced to register as Democrats. I know here in this county and in other counties where Negroes have registered in large numbers, no efforts were made to force them to register as Democrats.

At the approaching registration period I hope no efforts will be made in your county to force Negroes to register as Democrats or to prevent the few eligible under the law from registering.

There will not be more than 100 in your entire county eligible to vote at this time under the law, which only allows those coming of age since last registration time or who have moved into the state one year since last registration and, of course, have lived in the county and precinct the required time.

Negroes in this county are mostly registered Democrats because they are anxious to have a voice in selecting public officials. Certainly we would not expect violating our laws to begin at registration periods.

Hoping all will end well for us, we are,

Very truly yours,

C. G. Lowe, Editor

The Muskogee Lantern, Negro
Democratic Newspaper and
Publicity Manager Negro Democratic State Organization."

With respect to said letter the witness, Judge Moss, testified:

"It might be well for me to state that I didn't read that long letter, to Mr. Parks. I only read that part of it which referred to those whom they thought might be eligible to register in Wagoner County—that is, who had become twenty-one since the last registration, those who had moved into the county or had moved into his precinct with transfer certificates. I didn't undertake to impress anything else in that letter, upon Mr. Parks."

That witness merely said to Parks that said letter, or that part of said letter in the judgment of witness, was a true statement of the law; that such is still the opinion of the witness, and that such is all the directions, advice, or suggestions witness gave Parks at said time.

The defendant, MARION PARKS, being duly sworn, examined by Mr. Stone, testified on behalf of the defendants, substantially, as follows:

That witness was registrar in 1934 in Gatesville Precinct #1, Wagoner County, Oklahoma. That witness knows plaintiff Lane. That witness did not state to said Lane, on the occasion to which Lane referred, and when Lane and others came to the home of witness, that witness had been instructed by the higher-ups not to register the Negroes. That witness did not say anything of that sort. That witness did not tell Lane that witness had been instructed or advised by Judge Moss not to register Negroes. That witness did not tell Lane at said time that witness had been advised or instructed by defendant Jess Wilson not to register Negroes or colored persons. That nothing of that sort occurred.

That witness recalls Judge Moss' referring to that letter when witness was in his office, Judge Moss having read to witness from said letter. That witness does not remember the exact words had with Judge Moss in said conversation, but witness does remember inquiring of Judge Moss about registering people who had become twenty-one years of age, and Judge Moss stated to witness "You register all that have become twenty-one since last registration". That Judge Moss advised witness to register all whom witness thought to be legal voters. That at said time witness did not have any un-

derstanding, agreement, or conspiracy, or anything of that sort with the defendants, nor with either of them, whereby it was understood that witness was to prevent Negroes from registering. That witness does not have any malice or ill feeling against these colored people. That witness was acting in good faith, honestly and fairly trying to follow the law, treating all alike, telling them the law, whether white or colored.

On Cross Examination, by Mr. Chandler, witness testified, substantially, as follows:

That witness did register white people from twenty-one years of age and up, the exact number witness being unable to remember, nor does witness remember their ages, nor all of the people registered at that time. That witness did not register Mr. Lane (plaintiff) because Lane had no papers showing he had ever registered. That witness asked him if he had ever registered, to which Lane replied that he had not. That witness told Lane, "I can't register you, if you have never registered unless you have become twenty-one since the last registration." That witness asked the white people whom he registered the same question. That the said white people had papers to prove that they were eligible voters. That the white electors registered by witness did not have certificates, they had proof they were eligible voters—they had witnesses to prove it. The basis of their eligibility was that they had been in the state one year, in the county six months, and in the township thirty days, witnesses meaning those electors who had just become twenty-one years of age and had no certificate of registration. Those over twenty-one had certificates from their precincts and they had voted. That witness registered eighty-six electors that proved that they had registered.

That witness did not mean to tell the court and jury that every person over twenty-one years of age, whom witness registered, was a person who had a transfer—they had proved that they were legal voters in different ways. Some had lived in the precinct different lengths of time, but there were none that lived in the precinct that had not registered since they moved in, since the last registration. All that witness registered in 1934 were those that had moved in since the last registration period. Those electors who moved in had to prove

to witness that they were legal voters, and in other cases they had registration certificates, and exhibited them to witness.

On Re-direct Examination, the witness Parks, examined by Mr. Watts, testified further, substantially, as follows:

That other than the plaintiff Lane and those who were certified, no other colored persons applied to witness for registration. That Lane and his associates were together when they were talking to plaintiff, there being four or five of them, and Lane doing the talking for said colored people. That the others did not discuss the matter with witness. The conversation between witness and Lane is all that took place.

Rebuttal Testimony of Plaintiff.

WILLIAM OLIVER, called as a witness for plaintiff, and being duly sworn, and examined by Mr. Robertson, testified as follows:

That witness is a preacher, sixty-eight years of age, lives in Red Bird, Oklahoma, and has lived there twenty-four years. That witness knows Lane, and during the registration period in 1916 plaintiff went with Lane to a man named Workman, who was the only registrar witness knew at that place. That witness did not know a man by the name of Pace.

On Cross Examination, by Mr. Stone, said witness testified:

That witness remembers Workman was the registrar in 1916, because it was the first year witness came to Oklahoma, and witness went to see the registrar in the fall of the same year. That said Workman told witness that he was not the registrar but that one Mr. Denison was registrar.

Plaintiff, I. W. LANE, was recalled as a witness for plaintiff, and testified further:

That the statement of Mr. Parks to the effect that Parks said nothing to witness about an order from the higher-ups was false.

Both sides announced in open court that they rest.

Motion of Defendants for an Instructed Verdict.

"By Mr. Stone: The defendants now and each of them move for a directed verdict in favor of the defendants and each of them against the plaintiff."

Request for Instructions by Plaintiff.

In open court the plaintiff Lane presented to the Court, and requested the court to instruct the jury, as is set forth in the following written requests for instructions, to-wit:

Plaintiff's Requested Instruction No.1.

Gentlemen of the jury, you are instructed that Section I of Article III, Section 13446 Oklahoma Statutes, 1931, provides in substance that the qualifications of an elector are that he must be a male citizen of the United States over the age of 21; that he must have resided in the State one year, in the county six months; and in the election precinct thirty days next preceding the election at which any such electors offer to vote.

You are further instructed that if you find from a preponderance of the evidence that the plaintiff, I. W. Lane, possessed such qualifications on the 24 day of October, 1934, and made application for registration on said day to the defendant Marion Parks, he, said I. W. Lane, was entitled to register.

Charles A. Chandler,

C. E. Robertson,

Attorneys for Plaintiff.

Requested by Plaintiff,

Refused and excepted to

Alfred Murrah,

U. S. District Judge.

(Filed in open Court April 20, 1937.)

Plaintiff's Requested Instruction No. 2.

Gentlemen of the jury, you are instructed that the Oklahoma Constitution, Section 1, of Article III, O. S. 1931, Sec. 13446, provides as follows, to wit:

"The qualified electors of this state shall be citizens of the United States, including persons of Indian descent, (native of the United States), who are over the age of twenty-one years, and who have resided in the State one year, in the County six months, and in the election precinct thirty days, next preceding the election at which such elector offers to vote. Provided, that no person adjudged guilty of a felony, subject to such exceptions as the Legislature may prescribe, nor any person, kept in a poor house at public expense, except Federal, Confederate, and Spanish-American ex-soldiers or sailors, nor any person in a public prison, nor any idiot or lunatic, shall be entitled to register and vote."

And you are further instructed that if you find from the evidence that the plaintiff I. W. Lane possessed each of the aforesaid qualifications on the 24th day of October, 1934, and on said day made application to the defendant Marion Parks, the precinct registrar, said Lane was under the laws and Constitution of Oklahoma entitled to be registered.

Charles A. Chandler,
C. E. Robertson,
Attorneys for Plaintiff.

Refused and excepted to.

Alfred Murrah,
Trial Judge.

(Filed in open Court April 20, 1937.)

Plaintiff's Requested Instruction No. 3.

Gentlemen of the Jury, you are instructed that Section 1 of Article 14 of the Amendments to the Constitution of the United States provides as follows, to wit:

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

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"Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

And that the Congress of the United States has enacted and passed Section 1979, R. S. which provides as follows, to wit:

"Section 1979. Civil action for deprivation of rights —Every person who, under color of any statute, custom, or usage of any State or Territory, subjects any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution or laws, shall be liable to the party injured in an action at law, suit in equity, or other proceeding for redress."

And the jury is further instructed that the above-quoted 14th Amendment and act of Congress are the Supreme Law of the Land, and the Judges in the States are bound thereby, anything in the Constitution or Laws of any State to the contrary notwithstanding.

The jury is further instructed that Section 5654, O. S. 1931 part of the Oklahoma Registration of 1916, and which the defendants Marion Parks and Jess Wilson plead as justification for refusal of Registration to the plaintiff Lane, is, as administered by the State of Oklahoma and its officers, agents, and servants, acting under its authority, violative of said 14th Amendment and said Act of Congress, in that said Section 5654, O. S. 1931, denies to the Negro citizens of the United States residing in Oklahoma and subject to its jurisdiction the equal protection of the laws: and said Section 5654, O. S. 1931, is unconstitutional, null and void, and does not constitute any justification or defense to the officers, agents, or servants of said State of Oklahoma for the refusal of registration to citizens of the United States otherwise qualified for registration.

Charles A. Chandler,
C. E. Robertson,
Attorneys for Plaintiff.

Refused and excepted to
Alfred Murrah,
Trial Judge.

(Filed in open Court April 20, 1937.)

Plaintiff's Requested Instruction No. 4.

Gentlemen of the Jury, you are instructed that the 15th amendment to the Constitution of the United States provides as follows, to wit:

"Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation."

And you are further instructed that, pursuant to said 15th amendment, the Congress of the United States passed and enacted the following acts, to wit: R. S. 2004, Sec. 31, of Chapter 3, Title 8, U. S. Code, which provides as follows, to wit:

"Section 31. Race, color or previous condition of servitude not to affect right to vote. * * * All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinctions of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding."

And the Congress also enacted and passed R. S. Sec. 1979, Section 43, of Chapter 3, Title 8, U. S. Code, which provides as follows, to wit:

"43. Civil action for deprivation of rights.—Every person who, under color of any statute, custom or usage of any State or Territory, subjects any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proceeding for redress."

The jury is further instructed that by Article VI of the Constitution of the United States the above mentioned 15th amendment and acts of the Congress are the Supreme Law of

the land, and the Judges in every State are bound thereby, anything in the Constitution or Laws of any State to the contrary notwithstanding. Further, that plaintiff has instituted this action under and pursuant to said acts of the Congress of the United States.

And the court further charges the jury that the defendants, by their answer filed in this action, contend that the denial and refusal of registration of the plaintiff Lane during the registration period including the 24th day of October, 1934, was in compliance with the 1916 Registration Laws of the State of Oklahoma, to wit: Sections 5652, 5654, O. S. 1931.

The court further charges the jury that the aforementioned Section 5654, O. S. 1931, does not constitute any defense to the defendants for the refusal to register said Lane, if the jury finds from a preponderance of the evidence that they or any of them did refuse him registration, for the reason that said Section 5654, O. S. 1931, is invalid and void, and unconstitutional as being violative of the 15th amendment to the United States Constitution, and discriminatory against the Negro citizens of the United States residing in the State of Oklahoma.

Charles A. Chandler,
C. E. Robertson,
Attorneys for Plaintiff.

Refused and excepted to

Alfred Murrah,
Trial Judge.

(Filed in open Court April 20, 1937.)

Plaintiff's Requested Instruction No. 5

Gentlemen of the Jury, it is charged by the petition of plaintiff herein that the defendants John Moss, Marion Parks, and Jess Wilson denied the plaintiff Lane the right to register during the 1934 registration period; and that such denial was directly due to a long-standing conspiracy which had existed among the election officers of Wagoner County, Oklahoma, and their successors, since 1916, and which conspiracy continued to exist and did exist on the 24th day of October, 1934, among the three defendants aforementioned.

In this connection, the court charges you that a conspiracy is a combination between or among two or more persons by concert of action to accomplish some unlawful purpose, or some lawful purpose by unlawful means.

And the court further instructs the jury, that, as a matter of law, that if it is found from a preponderance of the evidence that if such conspiracy existed on the 24th day of October, 1934, among said defendants, Jess Wilson, Marion Parks, and John Moss, or any of them, and that pursuant thereto and in furtherance thereof, said defendants or any of them, hindered, obstructed or prevented members of the Negro race, including plaintiff Lane, from registering as electors of Wagoner County, Oklahoma, then the verdict of the jury should be in favor of the plaintiff Lane and against such of the defendants as you find from a preponderance of the evidence were parties to such conspiracy, or actively participated therein.

Charles A. Chandler,
C. E. Robertson,
Attorneys for Plaintiff.

Refused and excepted to
Alfred Murrah,
Trial Judge.

(Filed in open Court April 20, 1937.)

Plaintiff's Requested Instruction No. 6.

Gentlemen of the jury, the court instructs you that if you find from a preponderance of the evidence that the plaintiff Lane is entitled to recover in this action, the amount of the recovery is for you to determine from all the facts in the case. Of course, you can not measure in dollars and cents the exact amount to which he is entitled, but it is for you to say, in the exercise of a sound discretion, from all the facts in the case, without fear and without favor, what amount will reasonably compensate him for the damage done him in being deprived of his right of franchise.

Charles A. Chandler,
C. E. Robertson,
Attorneys for Plaintiff.

Refused and excepted to

Alfred Murrah,
U. S. District Judge.

(Filed in open Court April 20, 1937.)

Plaintiff's Requested Instruction No. 7.

Gentlemen of the jury, the court instructs that in addition to the compensatory damages prayed for by the plaintiff in his petition, he also seeks to recover from the defendants, the sum of \$5,000, as punitive damages. In this connection, the court charges you that punitive damages are awarded for the purpose of punishing the defendants for the wrongful act, and setting an example before the community. If then, you find by a preponderance of the evidence in this case, that the defendants, or any of them, were actuated by feelings of ill will and prejudice in denying plaintiff Lane the right to register at the general election of 1934, then you will be justified in awarding punitive damages in an amount not exceeding \$5,000.

Charles A. Chandler,
C. E. Robertson,
Attorneys for Plaintiff.

Refused and excepted to
Alfred Murrah,
U. S. District Judge.

(Filed in open Court April 20, 1937.)

Whereupon, the jury was excused and the court heard extended argument from both counsel for the defendants and from counsel for the plaintiff, and after consideration of said motion by defendants for an instructed verdict in their favor, and request by plaintiff for instructions to the jury, as well as argument of respective counsel, the court announced in open court that it was ready to rule thereupon and to render its opinion; whereupon, Mr. Chandler, counsel for plaintiff, moved the court to cause its decision to be reduced to writing and incorporated into the record therein, for the purpose of further objecting to said opinion and of saving exceptions thereto, and said request being granted, the court delivered its opinion, as follows:

Opinion of Trial Court.

The Court is of the opinion in this case that plaintiff, having brought a suit for damages against the defendants and each of them, and that said petition or suit is founded in their official acts as registration officials of the county of Wagoner, Oklahoma. They allege, in substance, that these officials conspired together, among each other, secretly and otherwise, to prevent the plaintiff and others from their suffrage rights. They invoke Section 5654, Art. 3, Chap. 29 of the laws of Oklahoma, 1931. The plaintiff states in his petition that said statute is invalid and unconstitutional because the same is repugnant to the Fourteenth and Fifteenth amendments to the Constitution of the United State and is therefore inoperative, and seeks to recover damages by reason of the violation of a right granted to the plaintiff by the Fourteenth and Fifteenth amendments to the Constitution of the United States.

Now they raise the question, and the sole question pertinent to the determination of the issues in this case, whether Section 5654, Compiled Statutes 1931, is a valid statute and constitutional under the Fourteenth and Fifteenth Amendments to the Constitution of the United States, and counsel relies on, throughout, the doctrine announced in the Guinn case and the case of Meyers vs. Anderson.

The Court has very carefully considered these two cases and is of the opinion that the doctrine in these cases is sound and undoubtedly is the law of the land, but Section 5654, Compiled Statutes, 1931, is not in conflict with the doctrine announced in these cases. And in arriving at that conclusion the Court considers that, as announced in that case, the right of the State to set its standards for suffrage rights are undisputed and undenied, so long as they do not violate the Fourteenth and Fifteenth Amendments. The Court, in very strong language, states that the suffrage right and the standards for suffrage rights is undisputed and undenied and a right within the sovereign rights of the various states, and in that decision it is stated:

"We are of opinion that neither forms of classification nor methods of enumeration should be made the basis of striking down a provision which was independently legal and therefore was lawfully enacted because of the removal of an illegal provision which the legal pro-

vision or provisions may have been associated. We state what we hold to be the rule thus strongly because we are of the opinion that on a subject like the one under consideration involving the establishment of a right whose exercise lies at the very basis of government a much more exacting standard is required than would ordinarily obtain where the influence of the declared unconstitutionality of one provision of a statute upon another and constitutional provision is required to be fixed."

That brings us to this question—the Court must, under the law, established rule and doctrine, presume the validity of the statute unless it is clearly shown to be invalid because of unconstitutionality or for other reason. The Court indulges in that theory and subscribes to that doctrine of law. The Court is called upon to say that this statute is unconstitutional because it revitalizes the Grandfather Clause of the Constitution, which was, by the decision in *Guinn vs. United States*, declared unconstitutional.

And the Court has examined very carefully the provisions of the 1916 act in the light of the defects and unconstitutionality of the Grandfather Clause of the Constitution of the State of Oklahoma. And the Court is of the opinion that this act, which provides that it shall be the duty of the precinct registrar to register each qualified elector of his precinct who makes application between the 30th day of April and the 16th day of May, 1916, provided such person applying shall, at the time he applies to register, be a qualified elector in said precinct and who shall comply with the provisions of this act and it shall be the duty of every qualified elector to register within such time. And making provision for the registration of absentees; further making provisions for the right of appeal in the event that, for any reason, the right to register is denied him, arbitrarily or otherwise, and the State itself setting up its own machinery by which it shall govern its suffrage right, and giving the right of appeal, without regard to race, color or previous condition of servitude.

For this Court to say that the clause in the Fifteenth Amendment relating to race, color or previous condition of servitude was in the mind of the Legislature at the time this act was enacted and with the implied desire to circumvent the 14th and 15th amendments to the Constitution, would be

going further than this Court feels it should go. And that is what the Court would have to say under statement of counsel for plaintiff.

It is stated in this *Myers vs. Anderson* case, and in the *Guinn* case chief Justice White in delivering the opinion of the Court stated that if no other logical conclusion could be drawn, then the Court would imply that the Grandfather Clause was enacted specifically for the purpose of discriminating against the colored race, and it was for that reason and on that grounds, if the Court understands them, that grounds alone, that Justice White declared the Grandfather Clause unconstitutional.

In other words, there was no other logical conclusion to be drawn. Now after 1916, after this decision, it became necessary for the Legislature to enact a registration law. We would say they did. If not, people could vote indiscriminately. So it became the duty of the Governor and the Legislature and the law-making bodies of the State to enact a registration law.

Now then, to say that because the people who had voted in 1914 didn't have to register under the 1916 act, extended a privilege to that particular class of people over other citizens, electors, who didn't vote in 1914, would amount to a violation of the privileges and immunities granted under the 14th Amendment, and the race and color clause of the Fifteenth Amendment to the Constitution, is just further than this Court can go.

Call the jury.

Instruction of Verdict for Defendants.

And the jury being recalled, the Honorable Trial Judge instructed said jury to return a verdict for and in behalf of defendants in said cause. And said jury, being so instructed by the court, returned, and filed in open court the verdict, in the following words and figures, (omitting caption, to wit):

Verdict of Jury.

Verdict—"We, the jury in the above-entitled cause duly empaneled and sworn, upon our oaths, find the issues in favor of the defendants and against the plaintiff. (Signed) J. J. Ammons, Foreman."

Filed in open Court April 20, 1937.

To which verdict the plaintiff excepted, and exceptions were allowed him.

Plaintiff's Motion for New Trial.

Thereafter, and on April 23, 1937, the plaintiff, I. W. Lane, filed and presented to the court his motion for a new trial which was, omitting caption, in the following words and figures, to wit:

(Caption omitted.)

Motion for New Trial.

The above-named plaintiff, I. W. Lane, respectfully prays this Honorable Court to vacate and set aside the order of said court, made on the 20th day of April, 1937, whereby the trial of said cause was taken from the jury and a verdict adverse to plaintiff was ordered and directed by the court; to set aside said adverse verdict and the order of the court thereon, and to grant said plaintiff a new trial herein. Plaintiff alleges and shows the following grounds and reasons in the premises, to wit:

1. During the trial of said cause the Honorable Trial Judge committed errors of law, prejudicial to the rights of said plaintiff, to which plaintiff did then and there object and except.

2. During the trial of said cause it was established, and not controverted, that in Wagoner County, Oklahoma, where of a total population of 22,428 inhabitants 6753 were Negroes (U. S. Official Census, 1930), during the 20 years next preceeding trial of this cause the officials of the State of Oklahoma, administering the 1916 Registration Laws of said State (O. S. 1931, Sec. 5654), permitted only TWO Negro citizens of the United States to register and qualify as electors, although many Negro citizens of the United States, including plaintiff Lane, residing in said County were duly qualified otherwise. This clearly established an abridgment and denial of the right to vote, on account of race and color; and also a violation of the 15th Article on Amendment to the Constitution of the United States. And the trial court erred in holding and instructing the jury that said Registration laws were valid and not unconstitutional, to which plaintiff objected and excepted.

3. It appearing from the face of the Oklahoma Registration laws of 1936 (O. S. 1931, Sec. 5654) that said law is an attempted revitalization of the illegal grandfather clause, Art. III, Sec. 4a, Oklahoma Constitution, Sec. 13450, O. S. 1931; or the same invalid law in a new disguise of words, and having the same discriminatory and unconstitutional intent, operation, and effect, being violative of the 15th amendment to the Constitution of the United States, the Honorable Trial Court erred in holding and adjudging, and in instructing the jury in said cause that said laws were and are valid and not unconstitutional, to which plaintiff duly objected and excepted.

* 4. The said Registration Laws of the State of Oklahoma, (O. S. 1931, Sec. 5654), as made and enforced by the State, abridges the privileges and immunities of plaintiff Lane and of other citizens of the United States of his color and similarly situated, deprives them of liberty and property without due process of law, and denies them the equal protection of the laws; said Registration Laws are violative of the 14th Article of Amendment to the Constitution of the United States. The trial court erred in holding, adjudging and in instructing the jury that said laws were valid and not violative of the said 14th Amendment.

5. It appearing that there was abundant evidence to establish that the plaintiff Lane was duly qualified to be registered and to vote as an elector in said State at the times in question, and that the defendants had, acting jointly and severally, wrongfully prevented his registering or voting, the cause should have been submitted to the jury under proper instructions from the court; and in refusing so to submit said cause to the jury with proper instructions, the trial court committed error prejudicial to the rights of plaintiff, to all of which plaintiff then and there saved exceptions.

Wherefore, said plaintiff, I. W. Lane, respectfully prays this Honorable Court to vacate and set aside said order, verdict and judgment rendered and made in said cause, and to allow said plaintiff a new trial herein.

Dated this 23rd day of April, 1937.

I. W. Lane, Plaintiff,
By Charles A. Chandler,
C. E. Robertson,
Attorneys for Plaintiff.

Filed: April 23, 1937.

Order of Court Overruling and Denying Motion for
New Trial.

And on the 9th day of June, 1937, the aforementioned motion of plaintiff for new trial came on for hearing in open court, the respective parties being present by their respective counsel, and the court having considered said motion for new trial, denied same, and made and entered order to said effect, in the following words and figures, to wit:

“And the plaintiff having filed his motion for a new trial, which motion came on for hearing on this 9th day of June, 1937, a day in term time of this court, the parties appearing by their respective attorneys of record, and the court being duly advised,

“It is, on this 9th day of June, 1937 ordered, adjudged and decreed that the plaintiff's motion for new trial be and the same is hereby overruled, to which the plaintiff excepts, and exceptions are allowed him.”

Said order of court overruling motion of plaintiff for new trial, is incorporated in Journal Entry in said cause filed on the 9th day of June, 1937.

“Plaintiff's Exhibit No. 1.”

State of Oklahoma,
County of Wagoner, ss.

Before Jess Wilson, County Registrar, Wagoner County,
State of Oklahoma: Proceedings had on application to
strike certain names from the registration records of
said county: November 2nd, 1934.

(Index omitted.)

(1)

State of Oklahoma,
County of Wagoner, ss.

Before J. Wilson, County Registrar, said county and State:

Now comes John S. Moss and Frank J. Young and John L. Baldridge, electors of Wagoner County, State of Oklahoma, and respectfully represent to the County Registrar of Wagoner County, that they have reason to believe that the

names attached hereto appearing upon the County Registration Book as registered voters in precinct No. 2, Gatesville Township, are illegally registered in the County Registration Book of Wagoner County, Oklahoma, and for reason for said belief, say:

That the persons so registered in the Precinct Registration Book by Mose Walker, Registrar, did not voluntarily appear in person for registration before the said Mose Walker; that such persons whose names are hereto attached appearing as having been registered in said precinct were not eligible to registration on the date shown by the duplicate registration certificate in that they did not become qualified electors of said precinct between the 13th day of July, 1934, a registration period and the general election period beginning October 17th, 1934, and ending October 26, 1934; that the said registrar did not qualify said persons and made no effort to determine whether such persons were eligible to registration.

Wherefore, the undersigned applicants hereby apply in writing to the County Registrar of Wagoner County, to have all names hereto attached and registered by the said Mose Walker stricken from the County Registration Book kept by the County Clerk of Wagoner County, Oklahoma.

John S. Moss,
Frank J. Young,
John L. Baldridge.

(2)

State of Oklahoma,
County of Wagoner, ss.

Personally appeared before me, the undersigned Notary Public, John S. Moss and Frank J. Young and John L. Baldridge, who after being duly sworn, on oath say: That they have read the above and foregoing application, know the contents thereof and that all matters and things set out therein are true to the best of their knowledge and belief.

Witness my hand and seal of office at Wagoner, this the 29th day of October, 1934.

Laura Cantrell, Notary Public.

My commission expires Jan. 17, 1937. (Seal)

Names of Registered Persons Referred to in Attached Application.

David Jackson, A. F. Herndon, S. T. James, Jr., James Moses, Tom White, Oliver Davidson, Sumner Vann, E. W. Jackson, Boyce Littlejohn, George Martin, John Robinett, Willie Fisher, D. M. Maxwell, Lindsey Smith, W. M. Walker, George Marshall, William Savage, Emmett Lowery, Joe Smith, T. H. Curtis, N. A. Manuel, Virgie Savage, E. W. Jackson, Jr., Walter H. Davis, Chas. Wensett, Minnie Wensett, E. T. Smith, Lora Smith, Hays Gregory, John Macombe, J. T. McBurnett, Ollie McBurnett, A. M. Marshall, Virgie Harvel, Maude Hardester, Troy Hardester, Alta Hardester, Mrs. Jess Thomas, Gertie Duggan, Bertie Olinger, Francis Cagle, Mrs. B. F. Harvell, Cecil McKee, Lester Parker, W. I. Williams, M. S. Barnes, Lorine Barnes.

(Endorsed on back)

(3)

Precinct 2

Gatesville Twp.

Filed

October 30, 1934.

J. Wilson

County Registrar.

(4)

Office of County Registrar Wagoner County, Oklahoma.

To David Jackson, A. F. Herndon, S. T. James, Jr., James Moses, Tom White, Oliver Davidson, Sumner Vann, E. W. Jackson, Boyce Littlejohn, George Martin, John Robinett, Willie Fisher, D. M. Maxwell, Lindsey Smith, W. M. Walker, George Marshall, William Savage, Emmett Lowery, Joe Smith, T. H. Curtis, N. A. Manuel, Virgie Savage, E. W. Jackson, Jr., Walter H. Davis, Chas. Wensett, Minnie Wensett, E. T. Smith, Lora Smith, Hays Gregory, John Macombe, J. T. McBurnett, Ollie McBurnett, A. M. Marshall, Virgil Harvel, Maude Hardester, Troy Hardester, Alta Hardester, Mrs. Jess Thomas, Gertie Duggan, Gertie Olinger, Francis Cagle, Mrs. B. F. Harvell, Cecil McKee, Lester Parks, W. I. Williams, M. S. Barnes, Greetings:

You are hereby notified that on the 30th day of October, 1934, John S. Moss and others applied in writing to the undersigned County Registrar of Wagoner County, Oklahoma, to have your name stricken from the County Registration Book, citing as reasons therefor that you were not eligible for reg-

istration in Precinct No. 2, Gatesville Township of Wagoner County, State of Oklahoma, in that you have not become a qualified elector during the period between the 13th day of July, 1934, and the General election registration period beginning October 17th, 1934, and ending October 26th, 1934, and that there were illegal and irregular acts committed by the Registrar of said Precinct.

You are therefore ordered to be and appear before me at the Court House in the city of Wagoner, Oklahoma, on Friday, November 2nd, 1934, at the hour of two o'clock p.m., and show cause why your name should not be stricken from the Registration Book as prayed for in said application supported by affidavit.

Witness my hand this 30th day of October, 1934.

J. Wilson,
County Registrar.

Filed 4:45 p.m. Nov. 1, 1934.

J. Wilson,
Co. Registrar.

(5)

Sheriff's Return.

State of Oklahoma,
Wagoner County, ss.

I received this notice at 2 o'clock p.m. on October 30th, and served the same on the persons named therein as protestants, between the hours of 2 o'clock p.m. October 30th, 1934, and 1 o'clock p.m. October 31, 1934, and in the manner following, to-wit:

David Jackson	A. F. Herndon	S. T. James, Jr.
James Moses	Tom White	Oliver Davidson
E. W. Jackson	Boyce Littlejohn	George Martin
Willie Fisher	D. M. Maxwell	Lindsey Smith
W. M. Walker	William Savage	Emmett Lowery
T. H. Curtis	N. A. Manuel	Virgia Savage
F. W. Jackson, Jr.	Walter H. Davis	Charles Wensett
E. T. Smith	Lora Smith	Ollie McBurnett
A. M. Marshall	Virgle Harvel	Troy Hardester
Mrs. Jess Thomas	Gertie Duggan	Bertie Olinger
Francis Cagle	Mrs. B. F. Harvel	Cecil McKeen
W. I. Williams	Mrs. Lorine Barnes	M. S. Barnes

and by delivering to each of them, personally, a full, true and complete copy of the within notice.

(6)

And

Sumner Vann	John Robinet	George Marshall
Joe Smith	Minnie Wensett	Hays Gregory
John Macombe	J. T. McBurnett	Maude Hardester
Alta Hardester	Lester Parker	

by leaving a full, true and complete copy of the within notice at the usual place of residence of each of them in my county, with a member of the family of each, over fifteen years of age.

Clay Flowers,

Clay Flowers, Sheriff,

By Connie Murphy, Deputy.

Filed 4:45 p.m., No. 1, 1934.

J. Wilson, Co. Registrar.

(7)

State of Oklahoma,
County of Wagoner, ss.

Before J. Wilson, County Registrar, Said County and State:

Now comes John S. Moss and Frank J. Young and John L. Baldridge, electors of Wagoner County, State of Oklahoma, and respectfully represent to the County Registrar of Wagoner County, that they have reason to believe that the names attached hereto appearing upon the County Registration Book as registered voters in precinct No. 1, Creek Township, are illegally registered in the County Registration Book of Wagoner County, Oklahoma and for reason for said belief, say:

That George N. Goddard, whose name appears on certificates of registration is not a legally qualified elector in said precinct and could not legally act as Registrar of said Precinct; that the persons so registered by the said George N. Goddard did not apply to the said George N. Goddard, in person, for registration; that such persons so named were not eligible to registration on the 25th day of October, 1934 in that they did not become qualified electors of said precinct between the 13th day of July, 1934 and the general election date, October 17 to October 26, 1934; that the said purported

registrar did not qualify said persons and made no effort to determine whether such persons were eligible to registration.

Wherefore, the undersigned applicants hereby apply in writing to the County Registrar of Wagoner County to have all names hereto attached and registered by the said George N. Goddard stricken from the County Registration Book kept by the County Clerk of Wagoner County, Oklahoma.

John S. Moss,
Frank J. Young,
John L. Baldridge.

(8)

State of Oklahoma,
County of Wagoner, ss.

Personally appeared before me, the undersigned Notary Public, John S. Moss and Frank J. Young and John L. Baldridge, who after being duly sworn, on oath, say: That they have read the above and foregoing application, know the contents thereof and that all matters and things set out therein are true to the best of their knowledge and belief.

Witness my hand and seal of office at Wagoner, this the 29th day of October, 1934.

Laura Cottrell, Notary Public.

My commission expires Jan. 17, 1937. (Seal)

Names of Registered Persons Referred to in Attached Application.

Matt Williams, Louis Jonas, Winnie Jonas, Louise Jonas, Lois Ted Jonas, W. M. Mardon, Betty Taylor, Jim Badgett, Lester Anderson, Sam Gage, Lizzie Baggett, Emma Harrison, L. J. Robinson, Willie Lane, Wilma Jackson, Mose Jackson, Clementine Jackson, Verneice Jackson, Carrie Gage, Ira Williams, Aggie Williams, Janey Robinson, Cade Robinson, Rhoda Robinson, Hallie Anderson, Decader Robinson, William Markham, Mrs. Atley Hood, Atley Hood.

(Endorsed on back)

Precinct 1. Creek Township.

Filed October 30, 1934.

J. Wilson, County Registrar.

(9)

Office of County Registrar, Wagoner County, Oklahoma.

To: Matt Williams, Louis Jonas, Winnie Jonas, Louis Jonas, Lois Ted Jonas, W. M. Mardon, Betty Taylor, Jim Baggett, Lester Anderson, Sam Gage, Lizzie Bagett, Emma Harrison, L. J. Robinson, Willie Lane, Wilma Jackson, Mose Jackson, Clementine Jackson, Verneice Jackson, Carrie Gage, Ira Williams, Aggie Williams, Janey Robinson, Cade Robinson, Rhoda Robinson, Hallie Anderson, Deeder Robinson, William Markham, Mrs. Atley Hood, Atley Hood; Greeting:

You are hereby notified that on the 30th day of October, 1934, John S. Moss and others applied in writing to the undersigned County Registrar of Wagoner County, Oklahoma, to have your name stricken from the County Registration Book, citing as reasons therefor that you were not eligible for registration in Precinct No. 1, Greek Township of Wagoner County, State of Oklahoma, in that you have not become a qualified elector during the period between the 13th day of July, 1934, and the general election Registration period beginning October 17th, 1934 and ending October 26th, 1934, and that there were illegal and irregular acts committed by the Registrar of said precinct.

You are therefore ordered to be and appear before me at the Court House in the City of Wagoner, Oklahoma, on Friday, November 2, 1934, at the hour of two o'clock p. m., and show cause why your name should not be stricken from the Registration Book as prayed for in said application supported by affidavit.

Witness my hand this 30th day of October, 1934.

J. Wilson,
County Registrar.

Filed 4:45 p. m., Nov. 1, 1934,
J. Wilson, Co. Registrar.

(10)

Sheriff's Return.

State of Oklahoma,
Wagoner County, ss.

I received this notice at 5 o'clock p. m. on October 30th, and served the same on the persons named therein as protestants, between the hours of 5 p. m. o'clock October 30th, 1934,

and 1 o'clock p. m., October 31st, 1934, and in the manner following, to-wit:

Matt Williams	Louis Jonas	Winne Jonas
Louise Jonas	Lois Ted Jones	W. M. Mardon
Lester Anderson	Sam Gage,	Lizzie Bagett
Emma Harrison	L. J. Robinson	Willie Lane,
Wilma Jackson	Mose Jackson	Clementine Jackson,
Verneice Jackson	Carrie Gage	Ira Williams
Aggie Williams	Janey Robinson	Rhoda Robinson
Hallie Anderson	Atley Hood	Mrs. Atley Hood

by delivering to each of them, personally, a full, true and complete copy of the within notice.

And

Betty Taylor	Jim Bagett	Deeader Robinson
William Markham	Mose Jackson	

by leaving a full, true and complete copy of the within notice at the usual place of residence of each of them in my county, with a member of the family of each, over fifteen years of age.

Clay Flowers,
Clay Flowers, Sheriff,
By J. Beard, Deputy.

(Endorsed)

Filed 4:45 p. m., Nov. 1, 1934.

J. Wilson, Co. Registrar.

(11)

Wagoner County,
State of Oklahoma, ss.

Proceedings had and done at Wagoner, Wagoner County, Oklahoma, on the 2nd day of November, 1934, before Mr. Jess Wilson, County Registrar of Wagoner County, Oklahoma: Said hearing being had upon hearing application to strike certain registration certificates from the records of the County Clerk of Wagoner County, Oklahoma:

By Mr. Wilson: How many of these clients do you have here.

Mr. Chandler: Now are you ready to commence.

Mr. Wilson: Yes.

Mr. Chandler: I want the record to show that I, Charles A. Chandler and Cecil E. Robertson, appear here on behalf of these electors named in the affidavit as residing in Precinct Number One, Creek Township, Wagoner County, Oklahoma, and especially on behalf of Louis Jonas, Winnie Jonas, Louise Jonas, Lois Ted Jonas, Wilma Jackson, Mose Jackson, Clementine Jackson, Verneice Jackson, Carrie Gage, Ira Williams, Aggie Williams, Janey Robinson, Cade Robinson, Rhoda Robinson, Hallie Anderson, Decater Robinson, William Markham, and we appear specially for the sole purpose of objecting to this hearing and procedure for the following reasons, to-wit: First, that Jess Wilson, County Registrar, is disqualified to conduct or entertain this hearing for the reason or by reason of his being a defendant in a suit filed on or about October 26th in the United States District Court for the Eastern District of Oklahoma, where one Lane is plaintiff and said Jess Wilson, one John Moss and Marion Parks are defendants; For the further reason that said County Registrar has no jurisdiction in said matter; for the further reason no proper or legal notice has been served, given or proven as required by law, and for the further that the petition and affidavit upon which this procedure is being had is insufficient in law; and for the further reason that the Statutes under which this procedure is had violates the 14th Amendment and the 15th Amendment to the Constitution of the United States, violates the laws enacted pursuant thereto, and also violates Section Six of Article One of the Constitution of Oklahoma. And for the following reason, that the proceeding is not being had or entertained in good faith. That is all.

Mr. John Moss: Is that all you appear for, for that reason.

Mr. Chandler: Yes.

Mr. John Moss: Then you might excuse all of us and hear it.

Mr. Wilson: How many of your defendants are there here.

Mr. Chandler: Of those I have just named.

Mr. Wilson: Yes.

Mr. Chandler: I don't know.

Mr. Wilson: All right. We will excuse you gentlemen

and call Mat Williams.—You gentlemen are excused along with Judge Moss.

Mr. Chandler: No sir: I wish to insist upon being present at this hearing on these people I have just named, as their attorney.

Mr. Wilson: We will not accept any cross examination, it is just merely to thrash it out to see whether they are legal voters, legally registered. We could go ahead with cross examination and prolong it for two weeks, but there is no necessity for that, just to see if the precinct registrar has carried out his acts as he should.

(13)

Mr. Chandler: You understand there is nothing personal about this. I just insist upon representing these people, and if you insist upon me not being here I wish to make that a matter of record and object to that procedure.

Mr. Wilson: I don't see why they should have legal advice on the questions we intend to ask them.

Mr. Chandler: It is my position that citizens of Oklahoma and of the United States have a right to be represented by counsel in any matter or hearing wherein their property or political rights are involved, and, of course, it is up to the Court or the Registrar to exclude counsel, but it will be over my protest, and then, of course, I will save my exceptions. I will ask you to rule on that.

Mr. Wilson: Well, I am going to exclude you.

Mr. Chandler: To which I save an exception on behalf of these we represent, and on behalf of all of the electors of these precincts. These I just mentioned. Will you allow me an exception to that ruling.

Mr. Wilson: You can go on out.

Mr. Chandler: Will you allow me an exception.

Mr. Wilson: Exception to what,

Mr. Chandler: To the objection I have just made, and I further ask the County Registrar for leave to have this entire proceeding reported by Earl Goad who is a Court Reporter in this County.

Mr. Wilson: Who have you got, Connie.

Mr. Chandler: Will you rule on that.

Mr. Wilson: Why yes, that is all right, but we don't need you in here, I don't think.

Mr. Chandler: All right, thanks.

(14)

Whereupon: Jim Bagett, being first duly sworn by the County Registrar to testify to the truth, the whole truth and nothing but the truth in said matter, is examined and testified as follows, to-wit:

(Further proceedings, as shown in transcript, omitted herefrom.)

Plaintiff's "Exhibit No. 3".

Summary of ages of electors registered in Gatesville election Precinct No. 1, of Wagoner County, State of Oklahoma, during registration period of 1934, as shown by the registration record of Wagoner County, Oklahoma, introduced in evidence by plaintiff on trial:

Age of Electors	No. of Electors
21 yrs.	18
22 yrs.	18
23 yrs.	8
24 yrs.	7
25 yrs. to 29 yrs., both inclusive	23
30 yrs. to 34 yrs., both inclusive	18
35 yrs. to 39 yrs., both inclusive	14
40 yrs. to 44 yrs., both inclusive	15
45 yrs. to 49 yrs., both inclusive	9
50 yrs. to 59 yrs., both inclusive	10
60 yrs. and over	9
Total	149

The foregoing Bill of Exceptions contains all the material evidence offered and received on the trial of said cause, including all rulings made during the course of said trial which were excepted to by each of the parties, and all exceptions allowed by the court.

CHARLES A. CHANDLER,
Attorney for Plaintiff.

Notice of Filing Bill of Exceptions
and

Notice of Hearing on Settlement of Bill.

To the Defendants, Jess Wilson, John Moss, and Marion Parks; and Joseph C. Stone and Watts and Watts, Esquires, attorneys for said defendants.

You will please take notice that the plaintiff, I. W. Lane, in the above-entitled action; filed in the office of the Clerk of the District Court for the Eastern District of Oklahoma, on the 2nd day of September, 1937, his proposed Bill of Exceptions in said cause; that a copy of said Bill of Exceptions, with a copy of said notice, is herewith served upon you.

And please take further notice that said plaintiff, I. W. Lane, will bring on for settlement his proposed Bill of exceptions herein, here-in-above mentioned, at the Court Room of the United States District Court for the Eastern District of Oklahoma, in the Federal Building in the City of Muskogee, Oklahoma, on the seventh (7th) day of September, 1937, at the hour of Nine (9) o'clock a.m., or as soon thereafter as counsel can be heard.

Dated this 2nd day of September, 1937.

CHARLES A. CHANDLER,
Attorney for Plaintiff, Lane.

Acknowledgment of Service of Proposed Bill of Exceptions,
and of Notice of Filing and of Settling of Same.

The defendants, Jess Wilson, John Moss, and Marion Parks, by their attorney of record herein, hereby acknowledge service upon them of the foregoing proposed Bill of Exceptions, and of the foregoing notice of filing and of settling of same; and also of receipt of copies thereof.

Dated this 2nd day of September, 1937.

JOS. C. STONE,
Attorney for Defendants.

(Caption omitted.)

Stipulation for Settling Bill of Exceptions

Come now, I. W. Lane, plaintiff, by Charles A. Chandler, his attorney of record herein, and the defendants, Jess Wil-

son, John Moss and Marion Parks, by Joseph C. Stone, and Chas. G. Watts & Gordon Watts, their attorney of record, and agree and stipulate that the above and foregoing Bill of Exceptions, filed in the above-named court on the second day of September, 1937, contains all of the material evidence given and proceedings had upon the trial of this action and is in all respects correct; and said parties do further agree and stipulate that, without further notice to either of them, same may be approved, allowed, and settled by the trial judge, and made part of the record herein.

Dated this 8th day of September, 1937.

CHARLES A. CHANDLER,
Attorney for Plaintiff.

JOSEPH C. STONE,
CHAS. G. WATTS,
GORDON WATTS,
Attorneys for Defendants, Jess Wil-
son, John Moss, and Marion Parks.

Filed Sep. 8, 1937. W. V. McClure, Clerk.

(Caption omitted.)

Order Approving, Allowing, and Settling Bill of Exceptions.

The foregoing Bill of Exceptions was filed with the Clerk of this Court on the Second Day of September, 1937, within the time for the filing of said Bill; and the same contains all of the material evidence given and proceedings had upon the trial of this action, and is in all respects correct, and same is hereby approved, allowed, and settled and made part of the record herein.

Dated this 8th day of September, 1937.

ALFRED P. MURRAH,
United States District Judge.

Filed Sep. 8, 1937. W. V. McClure, Clerk.

Filed Sep. 2, 1937. W. V. McClure, Clerk.

(Caption omitted.)

Petition for Appeal.

To the Honorable Alfred P. Murrah, United States District Judge, and Judge of the trial of the above cause:

I. W. Lane, plaintiff in the above-entitled and numbered cause, respectfully shows that at the trial thereof this court instructed and directed the trial jury therein to render and return a verdict finding the issues in favor of the defendants, Jess Wilson, John Moss, and Marion Parks, and against this plaintiff; and that pursuant to said instruction and direction of the court said jury did return and render such verdict which was on the 20th day of April, A. D. 1937, duly filed in open court during the trial of said cause; to all of which this plaintiff duly objected and saved exceptions.

That on the 9th day of June, A. D. 1937, and in pursuance of the aforementioned verdict, ordered, instructed, returned, rendered, and filed as aforesaid, this court rendered and entered an order and judgment in favor of the aforementioned defendants and against this plaintiff, and dismissing, with prejudice, the petition of plaintiff herein, to all of which this plaintiff duly objected and excepted.

Further, that on the 23rd day of April, A. D. 1937, and within three days after the aforementioned adverse verdict was instructed, returned, rendered and filed, this plaintiff duly filed in said cause and submitted to the court herein his written motion for new trial, on account of the alleged errors therein specified and assigned; and that said motion for new trial came on for hearing in open court on the 9th day of June, 1937, at which time this court overruled and denied said motion for new trial and entered its order and judgment to said effect; to all of which this plaintiff objected and excepted, and saved exceptions.

That the afore-mentioned verdict, judgment, and order of the court denying motion for new trial have become final. That prior to the act of the Congress of the United States, of January 31, 1928, (Ch. 14, 45 Stat., 54) as amended by the act of April 26, 1928 (Ch. 440, 45 Stat., 466), said verdict and said judgment and order of this court would be reviewable upon Writ of Error, by the United States Circuit Court of Appeals, for the proper Circuit.

That said plaintiff, I. W. Lane, feeling himself aggrieved by the aforementioned adverse verdict, and act and order of

this court directing and instructing same, by the judgment of this court and by its order denying plaintiff new trial, as well as by the alleged errors committed during the trial of this cause, comes now by his attorney, Charles A. Chandler, and gives notice that he does appeal from said verdict, judgment, and orders of this court, to the United States Circuit Court of Appeals for the Tenth Circuit; and said plaintiff respectfully petitions this court for an order allowing said appeal to said Circuit Court of Appeals, by this plaintiff as appellant, under and according to the laws of the United States and the Rules of Court made and provided.

And said plaintiff, in connection with this petition for appeal, respectfully submits herewith his assignment of errors, setting forth separately and particularly each error asserted and intended to be urged upon said appeal; and said plaintiff further submits herewith his Cost Bond on Appeal conditioned according to law.

Wherefore, This Petitioner Respectfully Prays that this Honorable court allow his appeal to said United States Circuit Court of Appeals for the Tenth Circuit, and make order to said effect, fixing the amount of security for costs which the plaintiff shall give upon said appeal; and that the court approve the Appeal Bond herewith submitted; further, that this court sign and issue citation upon and to the defendants herein, to wit: Jess Wilson, John Moss, and Marion Parks.

And said plaintiff further prays that this court by its order allowing an appeal herein, to extend the time for thirty days from this date within which to prepare, settle and file Bill of Exceptions; and that this court reserve jurisdiction of this cause for the purpose of settling and filing herein said bill of exceptions.

Dated this 9th day of June A. D. 1937.

I. W. LANE,

Petitioner—Plaintiff.

By CHARLES A. CHANDLER,

C. E. ROBERTSON,

Attorneys for Petitioner.

Filed in open court Jun. 9, 1937. W. V. McClure, Clerk.

(Caption omitted.)

Assignment of Errors and Prayer for Reversal.

Now comes the above-named plaintiff, I. W. Lane, and files and makes the following assignment of errors upon which he will rely in the prosecution of appeal in the above-entitled and numbered cause, from the verdict rendered therein on the 20th day of April, A. D. 1937; from the judgment rendered therein on the 9th day of June A. D. 1937, and from the order therein rendered on the 9th day of June, A. D. 1937, denying and refusing plaintiff a new trial, to wit:

I.

During the trial of said cause the Honorable trial Judge committed errors of law, prejudicial to the rights of said plaintiff, to which plaintiff did then and there except.

II.

During the trial of said cause it was established and not controverted, that in Wagoner County, Oklahoma, where of a total population of 22,428 inhabitants 6753 were Negroes (U. S. Official Census, 1930), during the 20 years next preceeding trial of this cause the officials of the State of Oklahoma, administering the 1916 Registration Laws of the State (O. S. 1931, Sec. 5654), permitted only TWO Negro citizens of the United States to register and qualify as electors, although many Negro citizens of the United States, including plaintiff, Lane, residing in said county were duly qualified otherwise. This clearly established an abridgment and denial of the right to vote, on account of race and color; and also a violation of the 15th Article of Amendment to the Constitution of the United States; and the trial court erred in holding and instructing the jury in said cause that said Registration Laws were valid and not unconstitutional, to all of which plaintiff duly objected and excepted.

III.

It appearing from the face of the Oklahoma Registration Laws of 1916 (O. S., 1931, Sec. 5654) that said law is an attempted revitalization of the illegal Grandfather Clause, Art. III, Sec. 4a, Oklahoma Constitution, Sec. 13450, O. S. 1931; or the same invalid law in a new disguise of words, and having the same discriminatory and unconstitutional intent, op-

eration, and effect, being violative of the 15th Article of Amendment to the Constitution of the United States, the Honorable trial court erred in holding and adjudging, and in instructing the jury in said cause that said laws were and are valid and not unconstitutional, to which plaintiff duly objected and excepted.

IV.

The said Registration Laws of the State of Oklahoma (O. S. 1931, Sec. 5654), as made and enforced by the State, abridge the privileges and immunities of plaintiff Lane and of other citizens of the United States of his color and similarly situated, deprives them of liberty and property without due process of law, and denies them the equal protection of the laws; said Registration Laws are violative of the 14th Article of Amendment to the Constitution of the United States. The trial court erred in holding, adjudging, and in instructing the jury upon the trial of said cause that said laws were valid and not violative of the said 14th Amendment.

V.

It appearing that there was abundant evidence to establish that the plaintiff Lane was duly qualified to be registered and to vote as an elector in said State and Wagoner County at the times in question; and that the defendants had, acting jointly and severally, wrongfully prevented his registering or voting, the cause should have been submitted to the jury under proper instructions from the court; and in refusing so to submit said cause to the jury with proper instructions, the trial court committed an error prejudicial to the rights of plaintiff, to all of which plaintiff objected and excepted and saved exceptions.

VI.

It being established by the evidence that the plaintiff Lane was duly qualified as an elector of Wagoner County, Oklahoma; and that he made due and proper application to the defendant, Marion Parks, precinct Registrar, for registration at a time when said Lane was entitled to be registered as an elector; and that the defendant Parks refused and prevented said Lane's registration, for the sole reason that he was a Negro, said Parks acting under the color of a state custom, practice, and statute, plaintiff Lane was legally en-

titled to have his cause submitted to the jury; and the trial court erred in instructing the jury to render and return a verdict for the defendants and against said plaintiff; to all of which plaintiff objected and excepted.

VII.

There being adduced upon trial abundant evidence to establish that the defendants, Jess Wilson, John Moss, and Marion Parks, in denying to plaintiff Lane the right to register as an elector of Wagoner County, Oklahoma, and in consequently denying him the right to vote as an elector of said county and as a citizen of the United States, were acting conjointly and pursuant to an agreement and understanding to accomplish a result violative of the laws of the United States, the trial court erred in refusing to instruct the jury on the question and issue of conspiracy, as requested by the plaintiff; and in this the court erred, to which the plaintiff objected and excepted.

VIII.

The trial court erred in refusing to give to the jury the several instructions requested by the plaintiff; and to this the plaintiff objected and saved exceptions.

IX.

There being adduced upon trial abundant evidence to establish in favor of plaintiff every material issue in the case, the trial court erred as a matter of law in taking the case from the jury and in instructing a verdict in favor of the defendants and against the plaintiff; to which the plaintiff objected and excepted.

X.

The trial court committed an error of law in refusing to instruct the jury, as requested by the plaintiff, that Section 5654; O. S. 1931, in so far as it purported to deny to plaintiff Lane the right to register, was unconstitutional, null and void; and to this the plaintiff objected and saved exceptions.

XI.

The trial court erred in sustaining the motion of the defendants for an instructed verdict in their favor, when the evidence established in favor of plaintiff every material issue in the cause; and to this plaintiff objected and saved exceptions.

XII.

The verdict of the jury is not supported by any evidence adduced upon trial of the cause.

XIII.

The judgment of the court is not sustained by any evidence.

XIV.

The trial court erred in overruling and denying the motion of plaintiff for new trial, to which plaintiff objected and saved exceptions.

Wherefore, said plaintiff, I. W. Lane, respectfully prays that said verdict, judgment and orders of the trial court be reversed and that a new trial be ordered according to law; and plaintiff prays for such other, further, or additional relief as to the court may appear just and proper.

Dated this 9th day of June A. D. 1937.

I. W. LANE,

Plaintiff—Appellant.

By CHARLES A. CHANDLER,

C. E. ROBERTSON,

Attorneys for Plaintiff.

Filed in open court, Jun. 9, 1937. W. V. McClure, Clerk.

(Caption omitted.)

Cost Bond Upon Appeal.

Know all Men by These Presents:

That we, I. W. Lane as principal, and the United States Fidelity and Guaranty Company, a Corporation of Maryland, as surety, are held and firmly bound unto Jess Wilson, John Moss, and Marion Parks in the full and just sum of Five Hundred Dollars (\$500.00), to be paid to the said Jess Wilson, John Moss, and Marion Parks, and to their heirs, executors, administrators, successors, or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, successors, or assigns, jointly and severally by these presents. Sealed with our seals and dated this 8th day of June, A. D. 1937.

Whereas, lately at the term, A. D. 1937, of the District Court of the United States for the Eastern District of Oklahoma in a suit depending in said court between said I. W. Lane, plaintiff, and the aforesaid Jess Wilson, John Moss, and Marion Parks, defendants, judgment was rendered against said plaintiff, I. W. Lane; and the said I. W. Lane has petitioned said court for an appeal to reverse the said judgment in the aforesaid suit, and a citation directed to the said Jess Wilson, John Moss, and Marion Parks citing and admonishing them to be and appear in the United States Circuit Court of Appeals for the Tenth Circuit, at the City of Denver, Colorado, forty (40) days from and after the date of said citation.

Now, the condition of the above obligation is such that if the said I. W. Lane shall prosecute said appeal to effect, and answer all damages and costs if he fail to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

Sealed and delivered in the presence of:

I. W. LANE, (Seal)
Principal,

THE UNITED STATES FIDELITY AND GUARANTY COMPANY, A CORPORATION,

By ORBAN WINDHAM, (Seal)
Its Attorney in Fact, Surety.

The above and foregoing bond is hereby approved in open court this 9th day of June, 1937.

ALFRED P. MURRAH,
U. S. District Judge.

Filed in open court, Jun. 9, 1937. W. V. McClure, Clerk.

(Caption omitted.)

Order Allowing Appeal.

On motion of Charles A. Chandler, counsel for the plaintiff, I. W. Lane, and upon consideration of this court of the

petition for appeal duly filed by said plaintiff in open court on this 9th day of June, A. D. 1937, at the same time of rendition of final judgment and of order denying his motion for new trial herein, in favor of said defendants and against said plaintiff, said plaintiff noting an exception to said judgment and order, and exceptions being allowed him; said petition of plaintiff for appeal is granted and allowed, and it is hereby in open court ordered, adjudged and decreed that an appeal be allowed and granted, to the United States Circuit Court of Appeals for the Tenth Circuit, from the final judgment, verdict, and from the order of this court denying plaintiff's motion for new trial; and it is further ordered, adjudged, and decreed that a certified transcript of the record, testimony, exhibits, stipulations, bill of exceptions, and of all proceedings in said cause in this court be forthwith transmitted to said United States Circuit Court of Appeals for the Tenth Circuit.

It is further ordered that the Assignment of Errors submitted with said petition for appeal be filed in this court and made a part of the proceedings herein; and that cost bond upon appeal be fixed in the sum of Five Hundred Dollars (\$500.00), and the bond submitted by said plaintiff in said sum is hereby approved:

Done in open court this 9th day of June, A. D. 1937.

ALFRED P. MURKIN,
U. S. District Judge.

Filed in open court, Jun. 9, 1937. W. V. McClure, Clerk.

(Caption omitted.)

Citation.

United States of America,

To Jess Wilson, John Moss, and Marion Parks, Defendants, Greetings:

You, and each of you, are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Tenth Circuit, at the City of Denver, Colorado, forty (40) days from and after the day this citation bears date, pursuant to appeal from the District Court of the United States for the Eastern District of Oklahoma, wherein I.

W. Lane is appellant, and you are appellees, to show cause, if any there be why the verdict rendered and filed in the above entitled cause on April 20th, 1937, A. D., the judgment rendered in said cause in your favor in said cause on the 9th day of June, A. D. 1937, and why the order of said District Court of the United States for the Eastern District of Oklahoma denying to said appellant a new trial in said court, said verdict, judgment, and order being in your favor and against the said appellant, from which said appeal was allowed, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Alfred P. Murrah, judge of the United States District Court for the Eastern District of Oklahoma, this 9th day of June, A. D. 1937.

ALFRED P. MURRAH,
U. S. District Judge.

Acknowledgment of Service of Citation.

The undersigned hereby acknowledges service upon him of the above and foregoing Citation, said service being made in open court, as attorney for each of the defendants and appellees, to wit: Jess Wilson, John Moss, and Marion Parks; said service of citation being made on this 9th day of June, A. D. 1937.

CHAS. G. WATTS,
JOSEPH C. STONE,
Attorney of Record for the Defendants,
Jess Wilson, John Moss, and
Marion Parks.

(Caption omitted.)

Order Extending Time Within Which to Prepare, Settle and File Bill of Exceptions for Record Upon Appeal.

The application of the plaintiff herein below, appellant upon appeal, by Charles A. Chandler, as attorney, for an extension of forty-five (45) days time from this date for completing, settling and filing Bill of Exceptions upon appeal herein, being considered by the Court;

And it appearing to the Court that due diligence herein

has been exercised by said plaintiff and by his attorney, and that there should be herein an extension of forty-five (45) days time from this date within which said plaintiff and appellant shall be allowed and permitted to complete Bill of Exceptions for record upon appeal herein to the United States Circuit Court of Appeals for the Tenth Circuit;

Therefore, It is hereby ordered, adjudged, and decreed that the said plaintiff and appellant have an extension of forty-five (45) days from this date within which he shall be permitted to complete, settle, and file in the above entitled and numbered cause upon appeal, the Bill of Exceptions to be incorporated in the transcript of record for the appeal of said cause to the said United States Circuit Court of Appeals for the Tenth Circuit.

Dated this 28th day of June, 1937.

ALFRED P. MURRAH,
United States District Judge.

Filed Jun. 28, 1937. W. V. McClure, Clerk.

(Caption omitted.)

Stipulation for Extension of Time Within Which to Prepare, Serve, and Settle Bill of Exceptions, to Docket Appeal, and to File Record and Transcript in C. C. A.

It is hereby agreed and stipulated by and between the parties hereto that the plaintiff in error, I. W. Lane, shall have an extension of thirty days time from and after the time heretofore allowed within which to prepare, serve, settle, and file Bill of Exceptions in the above entitled cause; and that said plaintiff may have an extension of time for thirty days from and after the time heretofore allowed within which to docket the above entitled and numbered cause upon appeal to said Circuit Court of Appeals and to file with the Clerk of said Circuit Court of Appeals of the Tenth Circuit, record and transcript upon appeal in said cause.

And said parties do further agree and stipulate that orders extending time as hereinabove mentioned may be made and signed by any United States District Judge.

Dated this 11th day of August, 1937.

I. W. LANE,

Appellant.

By CHARLES A. CHANDLER,
Counsel for Appellant.
CHAS. G. WATTS,
Counsel for Appellees.

Filed Aug. 11, 1937. W. V. McClure, Clerk.

(Caption omitted.)

Order for Extension of Time to Prepare, Settle, and File Bill of Exceptions; To Docket Appeal, and to File Record and Transcript on Appeal.

On this 11th day of August, 1937, there being presented to the court the stipulation of the parties herein, consenting for an extension of thirty (30) days from and after the respective periods therefor heretofore allowed for appellant, I. W. Lane, to prepare, serve, settle, and file Bill of Exceptions herein, and to lodge and docket appeal herein in the United States Circuit Court of Appeals for the Tenth Circuit, and to file therein transcript and record upon appeal; the court finds that order should be made accordingly.

Wherefore, it is hereby ordered that, said plaintiff, I. W. Lane be allowed and granted a further extension of thirty (30) days from and after the time heretofore allowed, within which, respectively, to prepare, settle, and file Bill of Exceptions upon appeal herein; and to lodge and docket said appeal in the United States Circuit Court of Appeals for the Tenth Circuit, and to file therein transcript and record upon appeal.

Dated this 11th day of August, 1937.

ALFRED P. MURRAH,
U. S. District Judge.

Filed Aug. 11, 1937. W. V. McClure, Clerk.

(Caption omitted.)

Order Extending Time to Docket Appeal.

On this 10th day of September, 1937, it appearing to the court that same is reasonably necessary, and that the appellant has exercised due diligence in the premises, and that it will be impossible within the time heretofore allowed, to dock-

et appeal herein in the United States Circuit Court of Appeals for the Tenth Circuit, or to have record therein printed and filed in said appellate Court;

Wherefore, It is hereby ordered, adjudged, and decreed that the time within which appellant herein shall be permitted to docket appeal herein in the said United States Circuit Court of Appeals, and to file and lodge record upon appeal in said court, shall be extended for Forty-five days (45 d.) from and after the time heretofore allowed.

Done in open court this 10th day of September, 1937.

ALFRED P. MURRAH,
U. S. Dist. Judge.

The parties hereto do hereby agree and stipulate for the entering of the afore order.

CHARLES A. CHANDLER,
Attorney for Appellant.

JOSEPH C. STONE,
Attorney for Appellees.

Filed Sep. 20, 1937. W. V. McClure, Clerk.

(Caption omitted.)

Order Extending Time to Docket Appeal.

Now on this 22nd day of October, 1937, it appearing to the Court that the time heretofore allowed for docketing the appeal in the above entitled cause in the United States Circuit Court of Appeals for the Tenth Circuit, and for lodging printed transcript of record therein, is insufficient,

It Is Hereby Ordered that the time within which said plaintiff shall be permitted to docket said appeal and to file transcript of record therein in the United States Circuit Court of Appeals for the Tenth Circuit shall be, and the same is hereby extended to and until the 10th day of November, 1937.

ALFRED P. MURRAH,
U. S. District Judge.

Filed Oct. 22, 1937. W. V. McClure, Clerk.

(Caption omitted.)

Praecipe.

To the Clerk of the Afore-named Court:

You are hereby respectfully requested to make a Transcript of the Record to be filed in the United States Circuit Court of Appeals for the Tenth Circuit, pursuant to an appeal allowed in the above-entitled cause; and to include in such transcript of the record, the following papers and documents of record in your office, to wit:

1. Petition of Plaintiff, L. W. Lane.
2. Answer of Jess Wilson and Marion Parks.
3. Answer of John Moss.
4. Reply of Plaintiff to Answer of John Moss.
5. Reply of Plaintiff to answer of Jess Wilson and Marion Parks.
6. Verdict.
7. Order of the Court, dated April 20, 1937, instructing verdict for defendants. (Page 50 in Bill of Exceptions.)
8. Motion of Plaintiff, Lane, for new trial.
9. Journal Entry of Judgment, dated June 9, 1937.
10. Petition for Appeal.
11. Assignment of Errors.
12. Cost Bond on Appeal.
13. Order allowing appeal.
14. Citation, with proof of service thereof.
15. Order of June 28, 1937, Extending Time Forty-five Days to Docket Appeal.
16. Stipulation of August 11, 1937, for Extension of time to Settle Bill of Exceptions, and to Docket Appeal.
17. Order of August 11, 1937, for Extension of Time.
18. Bill of Exceptions filed in your office on Second (2nd) day of September, 1937, together With Stipulation and Order settling same, filed in your office on Eighth day of September, 1937, and attached to said Bill of Exceptions.
19. Order dated the 10 day of September, 1937, for extension of time for docketing appeal.

19A. Order extending time to docket appeal, dated October 22, 1937.

20. This Praecipe.

21. Certificate of the Court.

Said transcript to be prepared as required by the law, by the rules of this court, and by the rules of the United States Circuit Court of Appeals for the Tenth Circuit.

Dated this day of September, 1937.

CHARLES A. CHANDLER,

C. E. ROBERTSON

Attorneys for Appellant.

Service and Stipulation.

Service of the above praecipe is hereby accepted and acknowledged, and it is hereby agreed and stipulated that the matters set forth in the foregoing praecipe shall be the matters and things to be included therein, and to be included in the transcript of record.

Dated this day of September, 1937.

CHAS. G. WATTS,

GORDON WATTS,

JOSEPH C. STONE,

Attorneys for Appellees.

Filed Sep. 10, 1937. W. V. McClure, Clerk.

Certificate of Clerk.

United States of America,
Eastern District of Oklahoma—ss.

I, W. V. McClure, Clerk of the United States District Court for the Eastern District of Oklahoma, do hereby certify that the above and foregoing is a full, true and correct transcript of so much of the record in the case of I. W. Lane, Plaintiff, vs. Jess Wilson, Marion Parks, and John Moss, Defendants, No. 6353-Law, as was ordered by praecipe of counsel herein to be prepared and authenticated, as the same appears from the records in my office.

I further certify that the citation attached hereto, and returned herewith, is the original citation issued in said cause.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in the City of Muskogee, this 4th day of November, A. D. 1937.

(Seal)

W. V. McCLURE, Clerk.



[fol. 93] IN UNITED STATES CIRCUIT COURT OF APPEALS,
TENTH CIRCUIT

ORDER OF SUBMISSION

Eleventh Day, January Term, Friday, January 21st, A. D. 1938. Before Honorable Robert E. Lewis and Honorable Sam G. Bratton, Circuit Judges.

This cause came on to be heard, Charles A. Chandler, Esquire, appearing for appellant, Joseph C. Stone, Esquire, appearing for appellees.

On motion, appellant was granted leave to file three type-written copies of a reply brief in this cause within fifteen days from this day.

Thereupon, pursuant to agreement of counsel, this cause was submitted to the court, consisting of the sitting judges and Honorable Orie L. Phillips, Circuit Judge, without oral argument.

IN UNITED STATES CIRCUIT COURT OF APPEALS, SEPTEMBER
TERM, 1938

No. 1635

Charles A. Chandler, for appellant.

Gordon Wattes and Joseph C. Stone (Charles G. Watts was with them on the brief) for appellees.

Before Lewis, Phillips and Bratton, Circuit Judges

OPINION—September 19, 1938

LEWIS, Circuit Judge, delivered the opinion of the court:

Appellant, a negro man, brought this action against the three appellees to recover from them \$5,000, for that, as averred, they prevented his registration as an elector at the general election in November, 1934, because of his race and color. He was born in Alabama, but his residence has been in the village of Red Bird, Wagoner County, Oklahoma, since 1908 under claim of citizenship. He testified he voted in Oklahoma in 1910 and 1912, but did not vote thereafter because he did not register. He claims all the qualifications of an elector in Oklahoma (Oklahoma Constitution, Article

3, Section 1), and there is no denial of his right to vote if registered.

[fol. 94] The complaint is an attack on the Oklahoma statute providing for registration as a condition precedent to the right to vote. The act was passed in February, 1916. It is said that prior thereto Oklahoma had no requirements of registration throughout the state. Anticipating the election to be held on November 6, 1934, appellant on October 24, 1934, in company with several other negroes applied for registration to Marion Parks, registrar in appellant's voting precinct in Wagoner County, and was refused. Appellant testified that Parks told him he "was instructed by the higherups not to register any colored people"; that Parks stated the higherups were Jess Wilson, county registrar, and John Moss, county judge. Three days thereafter he filed this suit. At the conclusion of all the evidence each side moved for an instructed verdict, and the Court ruled in favor of appellees.

The registration provisions and requirements applicable here are found in Volume 1, Article 3, Chapter 29, Oklahoma Statutes 1931. It is referred to in the act itself as providing for a permanent record of all electors in the state, and it defines elections:

"to mean every general, primary, regular, or special election held in this state, or in any county, city, town, township, school district, or precinct for the nomination or election of federal, state, district, county, municipal, township, school district, or precinct officers, including United States Senators and members of Congress, and upon any issue submitted to the people of the State or any municipality or subdivision of the State."

Section 5652 is this:

"It shall be the duty of every qualified elector in this state to register as an elector under the provisions of this Act, and no elector shall be permitted to vote at any election unless he shall register as hereby provided, and no elector shall be permitted to vote in any primary election of any political party except of the political party of which his registration certificate shows him to be a member."

The next section (5653) provides that the Secretary of the State Senate shall within 60 days after the act becomes effec-

tive appoint one qualified elector in each county as county registrar, and the county registrar so appointed shall immediately appoint precinct registrars in each precinct within his county, who shall be a qualified elector and who shall be the official registration officer in his precinct. He is empowered to administer oaths and to exercise all the authority conferred upon precinct registrars by the act. County registrars hold office at the pleasure of the Secretary of the State Senate, and the precinct registrars hold office at the pleasure of the county registrars.

Section 5654 provides:

"It shall be the duty of the precinct registrar to register each qualified elector of his election precinct who makes application between the thirtieth day of April, 1916, and the eleventh day of May, 1916, and such person applying shall at the time he applies to register be a qualified elector in such precinct and he shall comply with the provisions of this act, and it shall be the duty of every qualified elector to register within such time; provided, if any elector should be absent from the county of his residence during such period of time, or is prevented by sickness or unavoidable misfortune from registering with the precinct registrar within such time, he may register with such precinct registrar at any time after the tenth day of May, 1916, up to and including the thirtieth day of June, 1916, but the precinct registrar shall register no person under this provision unless he be satisfied that such person was absent from the county or was prevented from registering by sickness or unavoidable misfortune, as hereinbefore provided. And provided that it shall be the mandatory duty of every precinct registrar to issue registration certificates to every qualified elector who voted at the general election held in this state on the first Tuesday after the first Monday in November, 1914, without the application of said elector for registration, and, to deliver such certificate to such elector if he is still a qualified elector in such precinct and the failure to so register such elector who voted in such election held in November, 1914, shall not preclude or prevent such elector from voting in any election in this state; and provided further, that wherever any elector is refused registration by any registration officer such action may be reviewed by the district court of the county by the aggrieved elector by his filing within ten days a petition with the Clerk of said court,

[fol. 96] whereupon summons shall be issued to said registrar requiring him to answer within ten days, and the district court shall be an expeditious hearing and from his judgment an appeal will lie at the instance of either party to the Supreme Court of the State as in civil cases; and provided further, that the provisions of this act shall not apply to any school district elections. Provided further, that each county election board in this state shall furnish to each precinct election board in the respective counties a list of the voters who voted at the election in November, 1914, and such list shall be conclusive evidence of the right of such person to vote."

Section 5655 makes it the duty of the county registrar to furnish at the expense of the county the proper registration certificate books and supplies; provides how they shall be kept; that they shall be delivered to the registrar in each precinct who shall receipt for them, the receipts to be held at the office of the county registrar; provides how the registration books shall be marked, the form and contents of each registration certificate and duplicate of each certificate issued to be retained in said books after they are filled in by the precinct registrar with indelible pencil, the issued registration certificate to be signed by the precinct registrar.

Section 5657 provides in part:

"Each qualified elector in this State may be required to make oath that he is a qualified elector in such precinct and shall answer under oath any questions touching his qualifications as an elector and give under oath the information required to be contained in a registration certificate. Except in the case of a qualified elector who voted at the general election held in this state on the first Tuesday after the first Monday in November, 1914, in which case it shall be the mandatory duty of the precinct registrar to register such voter and deliver to such voter a registration certificate and the failure to so register such elector and to issue such certificate shall not preclude or prevent such elector from voting at any election in this State. If any person shall fail or refuse to give the information required in a registration certificate, or fail or refuse to answer any questions propounded to him by said registrar touching his qualifications as an elector, such person shall not be registered and no certificate of registration shall be issued to him. If said registrar shall be satisfied that any person who makes application to register is a qualified elector in the precinct

at such time, and if such person complies with all of the provisions of this act, then said registrar shall detach the original registration certificate properly filled in and containing the information required in this act, and deliver to such person such original registration certificate. The precinct registrar shall retain in his possession all duplicate registration certificates and from such duplicate registration certificates shall make up a precinct registration book; such precinct registration book shall be substantially bound and shall be in the form and contain the information hereinafter provided. Such books shall be furnished by the county registrar in each county for each election precinct. On the back of each of such books shall be written or printed the words: 'Precinct Register, Precinct No. —, — County'."

This section further prescribes that each precinct registrar shall within ten days after the 20th day of June, 1916, and within ten days after any other registration deliver to the secretary of the county election board the duplicate registration certificates. The precinct registrar shall write his name at the time of delivery in ink upon each of said duplicate registration certificates immediately underneath the perforated edge of the stub from which the original registration certificate has been detached, and the secretary of the county election board is at the same time to place other marks of identification of said duplicate certificates. From these data the secretary of the county election board is required to make up a county registration book as a permanent record of the electors showing in alphabetical order and by precinct the name of each elector registered and the date of his registration, his age, residence, occupation, race, politics, and the number of his registration certificate as shown by the duplicate registration certificate of each precinct, and when he has completed the book file it with the county clerk of the county, that the book shall be a public record and the county clerk the custodian thereof.

Section 5658 provides for the issuance of a new certificate where one already registered changes his residence to some other precinct or changes his politics.

[fol. 98] Section 5659 provides in part:

"Any person who may become a qualified elector in any precinct in this State after the tenth day of May, 1916, or after the closing of any other registration period, may register as an elector by making application to the registrar of

the precinct in which he is a qualified voter, not more than twenty nor less than ten days before the day of holding any election and upon complying with all the terms and provisions of this Act, and it shall be the duty of precinct registrars to register such qualified electors in their precinct under the terms and provisions of this Act, beginning twenty days before the date of holding any election and continuing for a period of ten days. Precinct registrars shall have no authority to register electors at any other time except as provided in this Act and no registration certificate issued by any precinct registrar at any other time except as herein provided shall be valid. After the close of registration ten days before any election as herein provided, and after the close of the registration of electors on June 30, 1916, or after the close of any other supplemental registration, the precinct registrar shall, immediately after the closing of such registration, enter upon the precinct register the names of all persons registered during such period hereinbefore provided, and shall deliver to the Secretary of the county election board the duplicate registration certificates so issued in the same manner as hereinbefore provided, and the secretary of the county election board shall receive such certificates, receipt for the same, and add the names of such electors in the county registration book in the same manner as hereinbefore provided. The permanent record of registrations made by the Secretary of the county election board and filed with the county clerk shall be certified by the secretary of the county election board to be true and correct and when filed in the office of the county clerk shall be open to inspection by any person, and copies may be made of such record during the office hours of the county clerk, but in no case shall such permanent records be taken from the possession of said county clerk."

Section 5659 provides for registration of newly qualified electors after the tenth day of May, 1916, or after the closing of any other registration period.

[fol. 99] Section 5661 provides a procedure for striking from the registration books the name or names of anyone illegally registered.

Appellant set forth in his complaint said sections 5654 and 5657 of the registration act and then alleged:

"Further plaintiff alleges, upon information and belief, that the above mentioned sections are mere subterfuges

aimed exclusively and directly at and against Negro citizens of the United States residing in the State of Oklahoma, and further that said laws are and were designed for the exclusive purpose of depriving said Negro citizens of the right of suffrage, and in violation of Section 6, Article 1 of the Constitution of Oklahoma and also in violation of the 15th Amendment of the Constitution of the United States, and in violation of the laws of the United States enacted pursuant thereto. Said statutes and laws are further an illegal and cunning attempt to achieve the illegal purpose sought by "(The Amendment) Section 4a, Grandfather Clause of Article iii of the Constitution of Oklahoma, and to evade the effect of the decision of the Supreme Court of the United States, "(Guinn vs. United States," decided June 21st, 1915, 238 U. S. 347, 59 L. Ed. 1340). That said State Statutes designated for the purpose aforesaid were enacted on February 26, 1916, immediately after the above mentioned decision of the Supreme Court of the United States; and said laws provide for an unjust, unreasonable and illegal classification of the electors of the United States and of the State of Oklahoma; they give to precinct registrars therein provided for an arbitrary and capricious discretion to deny or refuse qualified Negro electors the right of suffrage; and said State laws deny and abridge the right of Negro citizens, including this plaintiff, to vote, solely on account of race, color and previous condition of servitude. That precinct registrars of Oklahoma in general in denying the right to register and the right of suffrage throughout said State of Oklahoma, and the defendants hereinabove named in denying and refusing to permit this plaintiff to register or vote, as hereinabove specified, were and are carrying out the patent and expressed intent and design of said State laws."

Preceding the copying in the complaint of the two sections of the statute (5654 and 5657) it was alleged at length that [fol. 100] a conspiracy was formed between county and precinct registrars and the county election boards to prevent by various devices and schemes the registration of negro voters solely on account of their race, color and previous condition of servitude; that the conspiracy was set in operation during the registration period in 1916 and has continued ever thereafter and still continues to operate, and thus negro residents of Wagoner County have been deprived

of the right of suffrage solely on account of their race, color and previous condition of servitude. The details of such conspiracy, particularly in the precinct in which appellant resides, are stated, such as the statement attributed to Marion Parks, registrar, on October 24, 1934, that he had been forbidden by the higherups to register any negroes, all of which was denied by answers and on the witness stand by appellees. Appellant also claimed that a man named Workman was precinct registrar in 1916 to whom he applied for registration and was not registered. It seems to be conclusively established by proof that Workman was not precinct registrar in 1916; that James L. Pace was registrar; and Pace and others so testified. Several registration certificates issued by Pace as registrar for that year were put in evidence. Workman seems to have been registrar in 1920.

Certainly there is nothing on the face of the registration statute that even tends to support appellant's claim of discrimination between white and negro electors, nor was there proof of the conspiracy charged. There was proof that but few negroes were registered in proportion to their population, but no proof of the number of qualified electors who applied and were refused. That was not within the compass of appellant's case. He seeks to have the entire statute avoided. Nor would it have supported his right to recovery. Appellant in his brief (p. 37) says this:

"The heart and essence of said registration laws, so far as the present question of constitutionality is concerned, is embodied in Sec. 5654, Oklahoma Statutes 1931, set forth in full in this brief, and this entire controversy centers around the question whether said Sec. 5654 is unconstitutional, as violating the 14th and 15th Amendments to the Constitution of the United States, * * *."

In *Pope v. Williams*, 193 U. S. 621, the court said:

"In other words, the privilege to vote in a State is [fol. 101] within the jurisdiction of the State itself, to be exercised as the State may direct, and upon such terms as to it may seem proper, provided, of course, no discrimination is made between individuals in violation of the Federal Constitution."

Under section 5654 all who voted at the election in 1914 were placed on the registration books and certificates were

issued to them by the registrars without applications therefor. It may be, and we take it as true, that inasmuch as the so-called grandfather clause in the Constitution of Oklahoma had not been declared void as violative of the Fifteenth Amendment until 1915 no negroes voted at the 1914 election, but at least many of them became qualified electors prior to the registration period in 1916, and Section 5652 gave notice that no elector would be permitted to vote at any election unless he should register as provided by the act. There were probably also some whites who were qualified to vote at the 1914 election who did not vote. They were on the same footing as to registration as were the qualified negroes. There was no distinction between them. Any elector, white or negro, who applied and was denied registration, had the same right to carry the issue thus made to the Supreme Court for determination. That seems to have been the situation in *Trudeau v. Barnes*, 65 F. (2d) 563, in which denial of relief such as sought here was adjudged against the plaintiff and certiorari denied. 290 U. S. 659.

After an attentive consideration of the whole act we are of the opinion that the trial court's disposition of the case should be affirmed. It is so ordered.

IN UNITED STATES CIRCUIT COURT OF APPEALS

JUDGMENT—September 19, 1938

This cause came on to be heard on the transcript of the record from the Eastern District of Oklahoma and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said district court in this cause be and the same is hereby affirmed; [fol. 102] and that Jess Wilson et al., appellees, have and recover of and from I. W. Lane, appellant, their costs herein.

IN UNITED STATES CIRCUIT COURT OF APPEALS

MOTION FOR STAY OF MANDATE PENDING APPLICATION FOR
CERTIORARI—Filed October 14, 1938

The above named appellant, I. W. Lane, appearing by Charles A. Chandler, his attorney of record herein, respect-

fully shows the court that he desires to make application to the Supreme Court of the United States for writ of certiorari to review the order, judgment and decision rendered in the above entitled cause by this Honorable Court, on or about the 19th day of September, 1938; that the time remaining, before the issuance of mandate from this court to the lower court, is insufficient within which to prepare record and transcript, and make such application to said Supreme Court. That for said reasons, it appears necessary that said appellant respectfully pray this Court to stay the issuance of Mandate herein for 60 days from this date.

Wherefore, said appellant respectfully prays the court to make and enter an order staying and withholding mandate in said cause, in order that said appellant may properly make application to said Supreme Court of the United States for such Writ of Certiorari.

Dated this 13th day of October, A. D. 1938.

Charles A. Chandler, Attorney for Appellant.

The appellees hereby acknowledge service of the foregoing Motion and receipt of copy thereof.

Dated this 13th day of October, 1938.

Joseph C. Stone, Attorney for Appellees.

[File endorsement omitted.]

IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER STAYING MANDATE—October 14, 1938

This cause came on to be heard on the motion of appellant for a stay of the mandate herein and was submitted to the court.

[fol. 103] On consideration whereof, it is now here ordered by the court that said motion be and the same is hereby granted and that no mandate of this court issue herein for a period of thirty days from this day, and that, if within said period of thirty days there is filed with the clerk of this court a certificate of the clerk of the Supreme Court of the United States that a petition for writ of certiorari, record and brief have been filed, with proof of service thereof under Section 3 of Rule 38 of the Supreme Court; the stay

hereby granted shall continue until the final disposition of the case by the Supreme Court.

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 104] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed December 12, 1938

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Tenth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: Enter Charles A. Chandler. File No. 42,945. U. S. Circuit Court of Appeals, Tenth Circuit. Term No. 460. I. W. Lane, petitioner, vs. Jess Wilson, John Moss and Marion Parks. Petition for a writ of certiorari and exhibit thereto. Filed November 7, 1938. Term No. 460, O. T., 1938.

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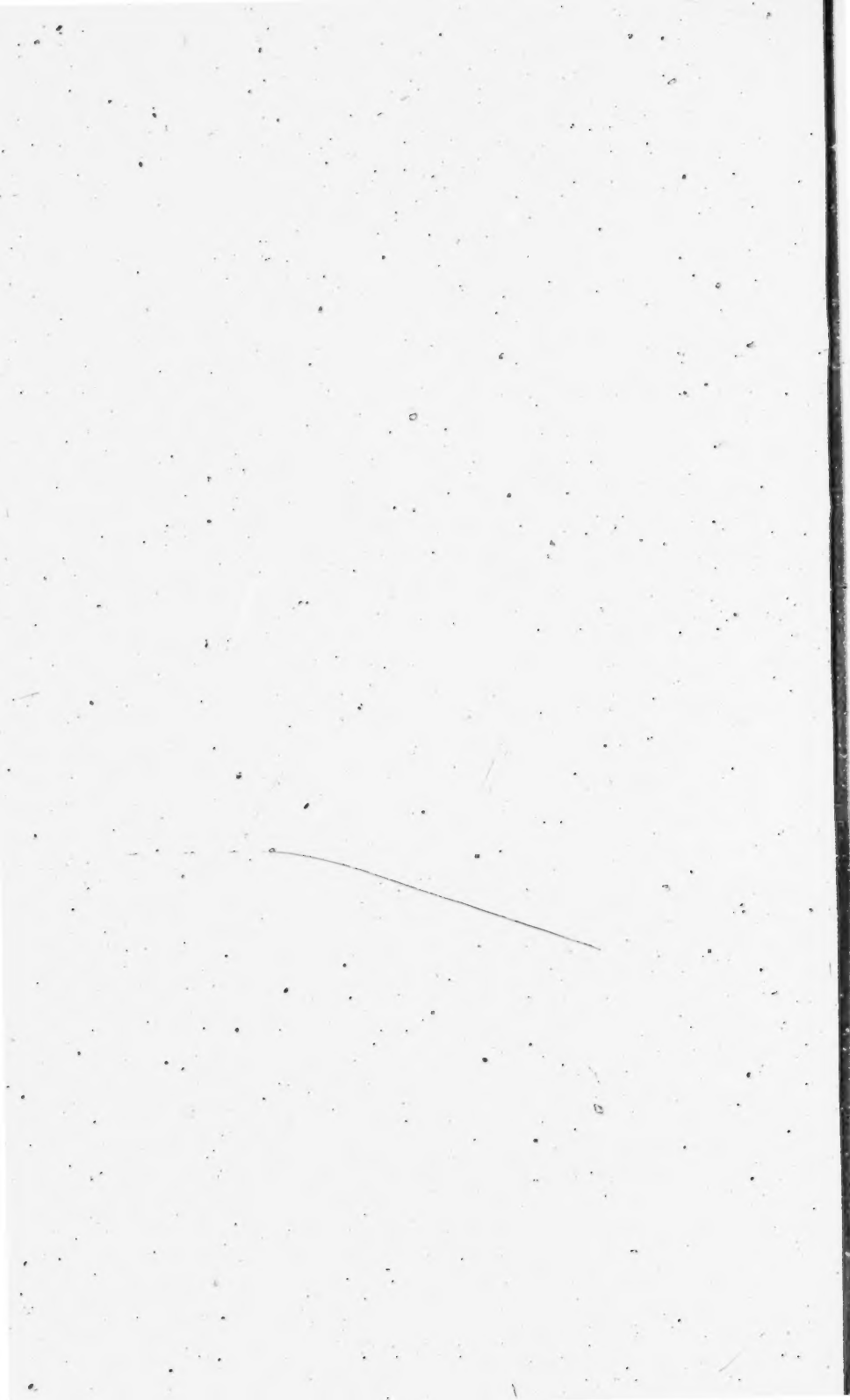
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FILED
NOV 7 1938

CHARLES ELMORE DROPLEY
CLERK

NO. 460

Supreme Court of the United States

October Term, 1938

I. W. LANE,
Petitioner,

VERSUS

JESS WILSON, JOHN MOSS and
MARION PARKS,
Respondents.

**PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE
TENTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.**

CHARLES A. CHANDLER,
Counsel for Petitioner.

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NO.....

In the Supreme Court of the United States

October Term, 1938

I. W. LANE,
Petitioner,
VERSUS

JESS WILSON, JOHN MOSS and
MARION PARKS,
Respondents.

PETITION FOR WRIT OF CERTIORARI

May It Please the Court:

The Petition of I. W. Lane respectfully shows to this Honorable Court:

A.

Summary Statement of Matter Involved

The controversy herein involves, primarily, the question of the constitutionality of the Oklahoma Registration Law of 1916, the petitioner herein, plaintiff below, contending that said Registration Law is violative of the 14th and 15th Amendments to the Constitution of the United States, and also violative of Section 1 of Article III, of the Constitution of Oklahoma. That part of said registration law especially contested by petitioner is Section 5654, Vol. 1, O. S. 1931, p. 1646, and said statute is set forth in appendix hereto, p. 26. Said Section 1 of Article III of the Oklahoma

Constitution, Vol. 2, O. S. 1931, p. 1406, Sec. 13446, is set forth in the appendix hereto, p. 25.

This action was instituted by this petitioner, as plaintiff, who, on October 27, 1934, filed his petition (R. pp. 1-11) in the United States District Court for the Eastern District of Oklahoma, making proper jurisdictional allegations and seeking \$5,000.00 actual damages, and \$5,000.00 punitive damages, from the defendants, as election officials and county judge, respectively, on account of their having denied said plaintiff the right to register, and to vote, in violation of his rights under the 14th and 15th Amendments to the Constitution of United States, and laws enacted pursuant thereto, as well as under the Constitution of the State of Oklahoma; plaintiff alleging that said defendants were acting pursuant to a conspiracy, and under color of the afore-mentioned Oklahoma Statute, O. S. 1931, Sec. 5654. By said Petition, said plaintiff alleged that said State statute was violative of the 14th and 15th Amendments to the Constitution of United States, violative of R. S. Sec. 2004, and violative of the Constitution of Oklahoma.

At the conclusion of trial in the District Court, as hereinafter appears, upon direction of the trial court, the jury returned a general verdict against plaintiff (R. p. 61), and judgment was entered accordingly (R. pp. 24-26). Upon appeal to the Circuit Court of Appeals for the Tenth Circuit, said judgment was affirmed (R. pp. 93-101).

It appears that prior to the adoption of said registration law of 1916, O. S. 1931, Sec. 5654, a constitutional provision known as the "grandfather clause" was in force and opera-

tion in the State of Oklahoma, same being Section 4a, Article III, of the Oklahoma Constitution, Vol. 2, O. S. 1931, p. 1407, Sec. 13450. Said grandfather clause is set forth in the appendix hereto, p. 25.

By a decision of this Court said grandfather clause was held to be violative of the 15th Article of Amendment to the Federal Constitution, and void. *Guinn v. United States* (1915), 238 U. S. 347, 59 L. ed. 1340. Immediately after said grandfather clause was invalidated, the Legislature of the State of Oklahoma was convened in special session, and it enacted said Registration Law of 1916 (See: note, Sec. 5654, O. S. 1931; Vol. 1, O. S. 1931, p. 1647).

Upon trial to the jury it was proved: That petitioner Lane was a Negro citizen, and in every respect qualified as an elector under the afore-mentioned Section 1, Article III of the Constitution of Oklahoma (R. pp. 27-29); that he had voted prior to 1914, but was unable to vote in 1914 because of the operation of the grandfather clause (R. p. 28); and that in 1916 the Registration Law here involved was in effect, under which plaintiff could not register (R. p. 28); that plaintiff tried to register during every election year, but was unable to get registered (R. pp. 27, 28); that during the registration period of 1934, petitioner and other Negro citizens, qualified as electors, made application to the respondent said Marion Parks, precinct registrar, for registration and that said registrar refused to register any of said Negroes for the reason, as stated by Parks, "Well, I was instructed by the higher-ups not to register any colored people." That Parks stated that the "higher-ups" were Jess Wilson, County Registrar, and John Moss, County Judge (R. p. 29).

Upon trial it was also established (R. p. 38) that according to the last Federal Census, that of 1930, the total population of Wagoner County was 22,428, of whom 6,753 were Negroes; and that in several townships in said County the Negro population predominated. It was further established (R. p. 36) that during 20 years next preceding trial in the lower court, there were registered in Wagoner County only two Negro electors. Further, in 1934, during the registration period of which Lane is especially complaining, there were registered in said County, by the precinct registrar appointed by the respondent Jess Wilson, County Registrar, 50 Negro electors, but that at a hearing instigated by the respondent John Moss, then County Judge, the names of all of said 50 Negroes were stricken from the registration record (R. p. 36). It appears further from the record (R. pp. 72-74) that at the hearing at which said names of Negro electors were stricken, said Negro electors were not given a fair trial, nor were they permitted to have counsel in the court room during said hearing, nor were they permitted to cross-examine opposing witnesses (R. pp. 72-74). It was further proved that the other defendants, in denying registration to plaintiff and other Negroes and in striking from the register the names of Negroes who were registered, were acting under instructions given by respondent John Moss, then County Judge (R. pp. 47-49, 72).

At the conclusion of the evidence, the plaintiff, in proper written form, requested the trial court to instruct the jury:

That if plaintiff Lane possessed the qualifications of an elector provided by Sec. 1 of Article III of Oklahoma Con-

stitution, and made application to the registrar for registration, said Lane was entitled under the Constitution and laws of Oklahoma to be registered (Request No. 2, R. pp. 52-53);

That said Oklahoma Statute, Sec. 5654, O. S. 1931, was violative of the 14th Amendment to the United States Constitution, and violative of R. S. Sec. 1979 (Request No. 3, R. pp. 53-54);

That said Section 5654, O. S. 1931, was violative of the 15th Article of Amendment to the Federal Constitution, and violative of R. S. Sec. 2004, Sec. 31, Chap. 3, Title 8, U. S. Code (Request No. 4, R. pp. 55-56);

And plaintiff also requested the court to instruct the jury upon the issue of conspiracy (Request No. 5, R. pp. 56-57).

The trial court refused to give any of said requested instructions, allowed said plaintiff exceptions, and thereupon instructed the jury to return a general verdict for the defendants (R. p. 61). Such verdict was duly returned and entered (R. p. 61), and thereupon judgment was entered in favor of defendants, and against plaintiff (R. pp. 24-26). The opinion of the trial court was dictated into the record (R. pp. 59-61), but does not appear to have been reported.

The cause was duly appealed to the United States Circuit Court of Appeals for the Tenth Circuit, petitioner, as appellant, assigning as errors the alleged errors herein complained of (R. pp. 79-82). By its decision, rendered September 19, 1938, said Circuit Court of Appeals affirmed the judgment of the trial court (R. pp. 93-101).

B.

Reasons Relied Upon for Allowance of Writ

1. It appears from the face of said Oklahoma Registration Law, Sec. 5654, O. S. 1931 (Appendix hereto, p. 26), as well as from the operation of said law as disclosed by the record herein, that said law is, in legal and constitutional contemplation, identical with the original grandfather clause; and that the opinion of the Supreme Court of the United States rendered in the case of *Guinn v. United States* (1915), 238 U. S. 347, 59 L. ed. 1340, holding said grandfather clause to be unconstitutional, was apposite to the issue and binding upon the Circuit Court of Appeals; and it appears further that the opinion of said Circuit Court of Appeals for the Tenth Circuit, holding said Oklahoma Registration Statute to be constitutional, wholly ignored said opinion of this Court in said *Guinn* case, and decided an important federal question in a way clearly in conflict with said applicable decision of this Supreme Court of the United States.

2. It was charged in the petition of plaintiff, and duly established upon trial, that said registration law of Oklahoma, Section 5654, O. S. 1931, as well as its administration, denied to plaintiff the equal protection of the law, in violation of the 14th Article of Amendment to the Constitution of United States; said Circuit Court of Appeals affirmed the judgment of the trial court, and held said statute to be constitutional, without in anywise passing upon said issue so made under the 14th Amendment, and in so doing; so far departed from the accepted and usual course of judicial pro-

ceedings as to call for an exercise of this Court's power of supervision.

3. It appears that there was properly assigned in the Circuit Court of Appeals the alleged error of the trial court in ruling adversely to alleged rights of petitioner under Section 1 of Article III; of the Oklahoma Constitution; and that the Circuit Court of Appeals affirmed said judgment of the trial court, without in anywise passing upon said State or local question, and in so doing, said Circuit Court of Appeals so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

4. It appears that in the trial court ample evidence was introduced to establish a *prima facie* case on behalf of plaintiff, and that in the Circuit Court of Appeals appellant alleged as error the instruction by the trial court of a general verdict for the defendants; and, further, that the Circuit Court of Appeals affirmed said judgment, without in anywise passing upon said alleged error, and in so doing, said Circuit Court of Appeals so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

C.

Prayer for Writ of Certiorari

Wherefore, your petitioner respectfully prays that a Writ of Certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Tenth Circuit, commanding that court to

certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket No. 1635, I. W. Lane, Appellant, vs. Jess Wilson, John Moss, and Marion Parks, Appellees; and that said decree of said United States Circuit Court of Appeals for the Tenth Circuit be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem just and proper; and your petitioner will ever pray.

I. W. LANE, Petitioner,
By CHARLES A. CHANDLER,
Counsel for Petitioner.

NO.....

In the Supreme Court of the United States
October Term, 1938

I. W. LANE,
Petitioner,

VERSUS

JESS WILSON, JOHN MOSS and
MARION PARKS,
Respondents.

**BRIEF OF PETITIONER IN SUPPORT OF
PETITION FOR WRIT OF CERTIORARI**

I.

OPINIONS OF THE COURTS BELOW

The decree of the trial court was entered on the 9th day of June, 1937 (R. pp. 24-26). The trial court did not render a formal opinion, but orally dictated into the record the basis of its decree (R. pp. 58, 59-62). This opinion was not reported.

The opinion of the United States Circuit Court of Appeals for the Tenth Circuit, affirming the decree of the trial court, was rendered on the 19th day of September, 1938 (R. pp. 93-101). Said opinion of said Circuit Court of Appeals is reported in the....., 1938, Federal Reporter, Advance Sheet, ... Fed. (2d) at pages..... (unreported at date hereof).

II.

JURISDICTION

This action arose under the 14th and 15th Amendments to the Constitution of the United States, and under R. S., Secs. 2004, 1979 (Title 8, U. S. C., Secs. 31, 43), and under the 14th subdivision of Sec. 41, Title 28, U. S. C. (R. S., Sec. 563, par. 12; Sec. 629, par. 16; March 3, 1911, c. 231, Sec. 24, par. 14, 36 Stat. 1092); and it was within the jurisdiction of the District Court.

Upon appeal to the United States Circuit Court of Appeals for the Tenth Circuit, that court properly acquired jurisdiction. Act of Feb. 13, 1925, Chap. 229, 43 Stat. 936, 1st subdivision of Sec. 128, Judicial Code.

The jurisdiction of this Supreme Court of United States is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of Feb. 13, 1925, 43 Stat. 938; and under Rule 38 of this Court.

III.

STATEMENT OF THE CASE

A sufficient statement of the case has been given herein under the heading "A" in the preceding Petition for Writ of Certiorari, pp. 1-5, and, in the interest of brevity, said statement is here referred to but not repeated at this point.

IV.

SPECIFICATION OF ERRORS

I.

It appears from the face of said Oklahoma Registration Law, Sec. 5654, O. S. 1931 (Appenfix hereto, p. 26), as well as from the operation of said law as disclosed by the record

herein, that said law is, in legal and constitutional contemplation, identical with the original grandfather clause; and that the opinion of the Supreme Court of the United States rendered in the case of *Guinn v. United States* (1915), 238 U. S. 347, 59 L. ed. 1340, holding said grandfather clause to be unconstitutional, was apposite to the issue and binding upon the Circuit Court of Appeals; and it appears further that the opinion of said Circuit Court of Appeals for the Tenth Circuit, holding said Oklahoma Registration Statute to be constitutional, wholly ignored said opinion of this court in said *Guinn* case, and decided an important federal question in a way clearly in conflict with said applicable decision of this Supreme Court of the United States.

II.

It was charged in the petition of plaintiff, and duly established upon trial, that said registration law of Oklahoma, Section 5654, O. S. 1931, as well as its administration, denied to plaintiff the equal protection of the law, in violation of the 14th Article of Amendment to the Constitution of United States; said Circuit Court of Appeals affirmed the judgment of the trial court, and held said statute to be constitutional, without in anywise passing upon said issue so made under the 14th Amendment, and in so doing, so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

III.

It appears that there was properly assigned in the Circuit Court of Appeals the alleged error of the trial court in ruling adversely to alleged rights of petitioner under Section 1 of Article III, of the Oklahoma Constitution; and that the Circuit Court of Appeals affirmed said judgment of the trial court, without in anywise passing upon said State or local question, and in so doing, said Circuit Court of Appeals so far departed from the accepted and usual course of

judicial proceedings as to call for an exercise of this Court's power of supervision.

IV.

It appears that in the trial court ample evidence was introduced to establish a *prima facie* case on behalf of plaintiff, and that in the Circuit Court of Appeals appellant alleged as error the instruction by the trial court of a general verdict for the defendants; and, further, that the Circuit Court of Appeals affirmed said judgment, without in anywise passing upon said alleged error, and in so doing, said Circuit Court of Appeals so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

V.

ARGUMENT

I.

It appears from the face of said Oklahoma Registration Law, Sec. 5654, O. S. 1931 (Appendix hereto, p. 26), as well as from the operation of said law as disclosed by the record herein, that said law is, in legal and constitutional contemplation, identical with the original grandfather clause; and that the opinion of the Supreme Court of the United States rendered in the case of *Guinn v. United States* (1915), 238 U. S. 347, 59 L. ed. 1340, holding said grandfather clause to be unconstitutional, was apposite to the issue and binding upon the Circuit Court of Appeals; and it appears further that the opinion of said Circuit Court of Appeals for the Tenth Circuit, holding said Oklahoma Registration Statute to be constitutional, wholly ignored said opinion of this Court in said *Guinn* case, and decided an important federal question in a way clearly in conflict with said applicable decision of this Supreme Court of the United States.

It is charged in the petition of plaintiff (R. p. 9) that said Oklahoma Registration Law, Sec. 5654, O. S. 1931, is "an illegal and cunning attempt to achieve the illegal purpose sought by the grandfather clause and to evade the effect of the decision of the Supreme Court of the United States" in *Guinn v. United States*, *supra*. This contention is fully established, both by a careful comparison of said two laws (see them: Appendix, pp. 25, 26), and by consideration of the results they have, respectively, produced. Said grandfather clause purported to establish a universal literacy test, but exempted therefrom the favored class consisting of those (whites) who could vote on January 1, 1866, and their lineal descendants.

Said registration law, S.c. 5654, O. S. 1931, purports to require universal registration as a prerequisite to the right of suffrage, but exempts therefrom the same favored class, the white electors who were favored by the grandfather clause, by continuing to those electors the advantage they enjoyed under the void grandfather law in effect at the time of the 1914 election.

In the opinion in the case of *Guinn v. United States*, *supra*, the grandfather clause was held unconstitutional, not because the State was without power to establish a literacy test, but because of the exemption from the literacy test of those coming within the classification of January 1, 1866.

Similarly, this petitioner has nowhere contended that the mere requirement of universal registration would violate any federal constitutional provision; but said petitioner did, and does, most emphatically insist that it is unconstitutional for the Oklahoma registration statute to require registration of those electors, who, like petitioner Lane, were duly qualified but were prevented by an unconstitutional law from voting at the 1914 election; and at the same time to exempt from registration those who enjoyed an illegal and unconstitutional advantage at said 1914 election.

The opinion of the Circuit Court of Appeals (R. p. 100) states with absolute finality:

"Certainly there is nothing on the face of the registration statute that even tends to support appellant's claim of discrimination between white and negro electors,
* * *

This part of the opinion of the Circuit Court of Appeals is

nothing more than a re-statement of the proposition wholly repudiated by the opinion of Mr. Chief Justice WHITE in the *Guinn* case, *supra*. Said the learned Chief Justice (238 U. S. 347, at p. 360, 59 L. ed. 1340, at p. 1346):

"The real question involved, so the argument of the Government insists, is the repugnancy of the standard which the amendment makes, based upon the conditions existing on January 1st, 1866, because on its face and inherently considering the substance of things, that standard is a mere denial of the restrictions imposed by the prohibitions of the 15th Amendment, and by necessary result re-creates and perpetuates the very conditions which the Amendment was intended to destroy."

And at page 364 of the U. S. Reporter, page 1348 of the L. ed.:

"It is true it contains no express words of an exclusion from the standard which it establishes of any person on account of race, color, or previous condition of servitude, prohibited by the 15th Amendment, but the standard itself inherently brings that result into existence since it is based purely upon a period of time before the enactment of the 15th Amendment, and makes that period the controlling and dominant test of the right of suffrage."

What difference there may be between the grandfather clause and the registration law is a difference in form and phraseology—none in substance—, the former established a standard based purely upon a period of time before the enactment of the 15th Amendment, and sought to perpetuate conditions prohibited by said Amendment; and the registration law established a standard based upon a period of time (1914) when said Amendment was flagrantly disregarded and violated, and sought to perpetuate said stan-

dard despite the mandate of the Supreme Court in said *Guinn* case, *supra*. The opinion of the Circuit Court of Appeals (R. p. 101) states:

"It may be, and we take it as true, that inasmuch as the so-called grandfather clause in the Constitution of Oklahoma had not been declared void as violative of the Fifteenth Amendment until 1915, no negroes voted at the 1914 election * * *."

Not only is said registration law of 1916 shown to be, in legal and constitutional contemplation, identical with the grandfather clause, and its administration shown by the record herein to have achieved a similar result, but said opinion of the Circuit Court of Appeals recites in support of said registration law the very reasoning offered in support of the grandfather law itself. In the opinion of the Supreme Court of Oklahoma, purporting to uphold the original grandfather clause, *Atwater v. Hassett et al.* (1910), 27 Okla. 292, at p. 310, this language was employed:

"In *Pope v. Williams et al.*, 193 U. S. 621, 24 Sup. Ct. 573, 48 L. ed. 817, Mr. Justice PECKHAM, in delivering the opinion of the court, said:

"* * * In other words, the privilege to vote in a state is within the jurisdiction of the state itself, to be exercised as the state may direct, and upon such terms as to it may seem proper, provided, of course, no discrimination is made between individuals, in violation of the Federal Constitution.'"

And in the opinion of the Circuit Court of Appeals below (R. p. 100), this language is found:

"In *Pope v. Williams*, 193 U. S. 621, the court said:

"In other words, the privilege to vote in a State is within the jurisdiction of the State itself, to be exer-

cised as the State may direct, and upon such terms as to it may seem proper, provided, of course, no discrimination is made between individuals in violation of the Federal Constitution.' "

In said *Atwater-Hassett* opinion, at p. 313 of 27 Okla. Reporter:

"In practically every state of the Union, on January 1, 1866, persons were disqualified from voting who had been convicted of infamous crimes, unless such disqualification had been removed, etc. In addition, an alien residing in this country on January 1, 1866, neither having become a naturalized citizen nor having declared his intention to become a citizen of the United States, was not entitled to vote in any of the states. * * * Such alien residing in the United States on January 1, 1866, neither being entitled to vote in the place of his residence nor under any organized government where he had previously resided or been a citizen of, and his descendants, would also be subject to this educational qualification, coming within the excluded class as of the date of January 1, 1866."

In the opinion of the Circuit Court of Appeals below (R. p. 101):

"Under Section 5654 all who voted at the election in 1914 were placed on the registration books and certificates were issued to them by the registrars without applications therefor. It may be, and we take it as true, that inasmuch as the so-called grandfather clause in the Constitution of Oklahoma had not been declared void as violative of the Fifteenth Amendment until 1915 no negroes voted at the 1914 election, but at least many of them became qualified electors prior to the registration period in 1916, and Section 5652 gave notice that no elector would be permitted to vote at any election unless he should register as provided by the act. *There*

were probably also some whites who were qualified to vote at the 1914 election who did not vote. They were on the same footing as to registration as were the qualified negroes. There was no distinction between them. Any elector, white or negro, who applied and was denied registration, had the same right to carry the issue thus made to the Supreme Court for determination" (Italics ours).

Said *Atwater v. Hassett* opinion was relied upon by the defendants in the *Guinn* case, *supra*, and it was wholly repudiated by the decision therein rendered by this Court. See note to said opinion, 59 L. ed. 1340, at p. 1341. Thus, said opinion of the Circuit Court of Appeals tacitly follows an opinion of a state court, which state court opinion had been wholly repudiated by the decision of this Supreme Court of the United States; and said opinion of the Circuit Court of Appeals fails in anywise to even mention said *Guinn* decision which was directly in point and controlling, and it fails in anywise to observe other decisions of this Court upon the same proposition. See also: *Myers v. Anderson* (1915), 238 U. S. 368, 59 L. ed. 1349.

Said opinion of the Circuit Court of Appeals, R. p. 101, adverts to the case of *Trudeau v. Barnes* (C. C. A. 5, 1933), 65 Fed. (2d) 563. There was involved in said *Trudeau-Barnes* case a provision of the Constitution of Louisiana establishing a universal literacy test, without any attempt at classifying the electors or exempting any class from the requirement. It was quite clearly pointed out by the opinion in said case that said law was,

"essentially different from the Grandfather Clause of the Oklahoma Constitution which was held void in *Guinn v. United States*, * * * and the Maryland statute which was under consideration in *Myers v. Anderson*, * * *."

Said opinion in said *Trudeau-Barnes* case, for the reasons stated, did not have the least bearing upon the constitutional question before the Circuit Court of Appeals in the instant case.

II.

It was charged in the petition of plaintiff, and duly established upon trial, that said registration law of Oklahoma, Section 5654, O. S. 1931, as well as its administration, denied to plaintiff the equal protection of the law, in violation of the Fourteenth Article of Amendment to the Constitution of United States; said Circuit Court of Appeals affirmed the judgment of the trial court, and held said statute to be constitutional, without in anywise passing upon said issue so made under the Fourteenth Amendment, and in so doing, so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this court's power of supervision.

It was charged by petition of plaintiff that said registration law, as well as the administration thereof by defendants, denied to plaintiff the equal protection of the laws, contrary to the 14th Amendment (R. p. 3). By proposed instruction No. 3, plaintiff requested the trial court to instruct the jury on the issue raised under the 14th Amendment (R. pp. 53-54); and by the Fourth and Eighth Assignments of Error (R. pp. 80-81), in the Circuit Court of Appeals petitioner assigned as error the refusal of the trial court to give said instructions requested by plaintiff (R. pp. 80-81).

The opinion of the Circuit Court of Appeals did not in anywise even mention said 14th Amendment, or the issues so raised thereunder. The only part of said opinion which by any intendment even remotely related to the equal protection clause of the 14th Amendment, is the following, R. p. 101:

"There were probably also some whites who were qualified to vote at the 1914 election who did not vote. They were on the same footing as to registration as were the qualified negroes. There was no distinction between them. * * *

The fact that a law—either the grandfather clause, or the registration law—may also discriminate against some white persons does not atone for its unconstitutionality as against Negroes. The guaranty of equal protection of the law, as afforded by the 14th Amendment, extends to all persons—white, alien, and Chinese, as well as to Negroes. *Yick Wo v. Hopkins* (1886), 118 U. S. 356, 30 L. ed. 220; *Truax v. Raich* (1915), 239 U. S. 33, 60 L. ed. 131.

Under this proposition, the complaint of petitioner is not that the Circuit Court of Appeals merely erred in disposing of the case, but that said court refused in any manner to pass upon an important federal constitutional question properly before it—that said court, in effect, abdicated and refused to exercise the judicial function, and abrogated petitioner's statutory right of appeal.

III.

It appears that there was properly assigned in the Circuit Court of Appeals the alleged error of the trial court in ruling adversely to alleged rights of petitioner under Section 1 of Article III, of the Oklahoma Constitution; and that the Circuit Court of Appeals affirmed said judgment of the trial court, without in anywise passing upon said State or local question, and in so doing, said Circuit Court of Appeals so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this court's power of supervision.

By proposed instruction No. 2, plaintiff requested the trial court to instruct the jury that if plaintiff possessed the qualifications prescribed by Sec. 1, of Article III, of the Oklahoma Constitution (Appendix, p. 25), he was entitled to be registered (R. pp. 52-53); and in the Circuit Court of Appeals, by the 5th and 8th Assignments, petitioner alleged as error the refusal of the trial court to give said requested instruction (R. pp. 80, 81). In affirming the judgment of the trial court, the Circuit Court of Appeals failed in any manner to observe or to rule upon said state question (R. pp. 93-101).

Upon the appeal to said Circuit Court of Appeals, the above-mentioned state question was properly before the court for determination. *Guinn v. United States*, supra (1915), 238 U. S. 347, 59 L. ed. 1340; *Davis v. Wallace* (1922), 257 U. S. 478, 66 L. ed. 325.

Said Oklahoma registration law, Sec. 5654, O. S. 1931, exempting from its requirements those who voted in the illegal election of 1914, and further providing, in effect, that other qualified electors must register within a ten-day pe-

riod, or institute litigation within such period, or be forever disfranchised, was violative of said Secs. 1 and 6, Article III of the Oklahoma Constitution (Sec. 6, Article III, Oklahoma Constitution, is set forth in Appendix, p. 26).

In Cooley's Constitutional Limitations, 8th Edition, 1927, Vol. 2, at p. 1370, the law on this proposition is stated:

"All regulations of the elective franchise, however, must be reasonable, uniform, and impartial; they must not have for their purpose directly or indirectly to deny or abridge the constitutional right of citizens to vote, or unnecessarily to impede its exercise; if they do, they must be declared void." Citing: *Cape v. Foster*, 12 Pick, 485, 23 Am. Dec. 632; *Monroe v. Collins*, 17 Oh. St. 665; *Kineen v. Wells* (Sup. Jud. Ct. of Mass., 1887), 144 Mass. 497, 11 N. E. 916, and other cases.

See, also:

Vol. 9, Ruling Case Law, p. 1036, Secs. 52, 53, 54;
McCafferty v. Guyer et al. (1868), 59 Pa. St. 109;
Monroe et al. v. Collins (1866), 17 Ohio St. 665;
Kineen v. Wells et al. (1887), 144 Mass. 497, 11
N. E. 916.

IV.

It appears that in the trial court ample evidence was introduced to establish a *prima facie* case on behalf of plaintiff, and that in the Circuit Court of Appeals appellant alleged as error the instruction by the trial court of a general verdict for the defendants; and, further, that the Circuit Court of Appeals affirmed said judgment, without in anywise passing upon said alleged error, and in so doing, said Circuit Court of Appeals so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

In the trial court plaintiff saved exceptions to the instruction of a verdict for the defendants (R. pp. 61-62); and in the Circuit Court of Appeals, by the 9th Assigned Error, petitioner assigned as error the trial court's taking the case from the jury and instructing a verdict in favor of defendants (R. p. 81). It appears from the statement of the case herein, *ante*, pp. 1-5, that sufficient evidence was introduced to prove a *prima facie* case on behalf of plaintiff. The Circuit Court of Appeals refused in any manner to pass upon said alleged error, except by the general statement that the trial court's disposition of the case should be affirmed (R. p. 101).

The question before the Circuit Court of Appeals, upon appeal, was whether there was sufficient evidence to submit to the jury, and whether the trial court erred in taking the case from the jury, and not the question of whether there was evidence to support the judgment actually rendered by the court. *Richardson v. City of Boston*, 60 U. S. 263, 15 L. ed. 639. There was a conflict in the evidence as to a conspiracy, particularly as to the alleged statement made by the respondent Marion Parks; there was further conflicting

evidence as to who was registrar in 1916, and whether this petitioner made application to the registrar for registration. The Circuit Court of Appeals seems (R. p. 100), by its opinion, to have undertaken to determine the facts from conflicting evidence,—a function not permitted to the court in a case tried to a jury. As this case has been disposed of, petitioner's right to trial by jury has been fritted away, without so much as a hearing on the questions, not even in the Circuit Court of Appeals. This case seems to deserve an exercise of this Court's power of supervision.

CONCLUSION

Wherefore, it is respectfully submitted that this Petition for Writ of Certiorari to review the judgment of the Circuit Court of Appeals for the Tenth Circuit should be granted.

I. W. LANE, Petitioner,
By CHARLES A. CHANDLER,
Counsel for Petitioner.

APPENDIX

Section 1 of Article III of Oklahoma Constitution, Vol. 2, O. S. 1931, p. 1406, provides:

"13446. Electors—Qualifications—Felons—Paupers.

"Section 1. The qualified electors of this State shall be citizens of the United States, citizens of the State, including persons of Indian descent, (native of the United States), who are over the age of twenty-one years, and who have resided in the State one year, in the County six months, and in the election precinct thirty days, next preceding the election at which such elector offers to vote. Provided, that no person adjudged guilty of a felony, subject to such exceptions as the Legislature may prescribe, nor any person, kept in a poorhouse at public expense, except Federal, Confederate and Spanish-American ex-soldiers or sailors, nor any person in a public prison, nor any idiot or lunatic, shall be entitled to register and vote."

Section 4a of Article III of Oklahoma Constitution, Vol. 2, O. S. 1931, p. 1407, provides:

"13450. Grandfather Clause.

"Sec. 4a. No person shall be registered as an elector of this State, or be allowed to vote in any election held herein, unless he be able to read and write any section of the Constitution of the State of Oklahoma; but no person who was, on January 1st, 1866, or at any time prior thereto, entitled to vote under any form of government, or who at that time resided in some foreign nation, and no lineal descendant of such person, shall be denied the right to register and vote because of his inability to so read and write sections of such Constitution.

"Precinct election inspectors having in charge the

registration of electors shall enforce the provisions of this section at the time of registration, provided registration be required. Should registration be dispensed with, the provisions of this section shall be enforced by the precinct election officers when electors apply for ballots to vote."

Section 6 of Article III of Oklahoma Constitution, Vol. 2, O. S. 1931, p. 1408, provides:

"13452. Conduct of Elections—Registration.

"Sec. 6. In all elections by the people the vote shall be by ballot and the Legislature shall provide the kind of ticket or ballot to be used and make all such other regulations as may be necessary to detect and punish fraud, and preserve the purity of the ballot; and may, when necessary, provide by law for the registration of electors throughout the State or in any incorporated city or town thereof, and, when it is so provided, no person shall vote at any election unless he shall have registered according to law."

Section 5654, Vol. 1, O. S. 1931, p. 1646, provides:

"5654. Time for Registration—Absentees—Appeals. It shall be the duty of the precinct registrar to register each qualified elector of his election precinct who makes application between the thirtieth day of April, 1916, and the eleventh day of May, 1916, and such person applying shall at the time he applies to register be a qualified elector in such precinct and he shall comply with the provisions of this act, and it shall be the duty of every qualified elector to register within such time; provided, if any elector should be absent from the county of his residence during such period of time, or is prevented by sickness or unavoidable misfortune from registering with the precinct registrar within such time, he may register with such precinct registrar at

any time after the tenth day of May, 1916, up to and including the thirtieth day of June, 1916, but the precinct registrar shall register no person under this provision unless he be satisfied that such person was absent from the county or was prevented from registering by sickness or unavoidable misfortune, as heretofore provided. And provided that it shall be the mandatory duty of every precinct registrar to issue registration certificates to every qualified elector who voted at the general election held in this state on the first Tuesday after the first Monday in November, 1914, without the application of said elector for registration, and, to deliver such certificate to such elector if he is still a qualified elector in such precinct and the failure to so register such elector who voted in such election held in November, 1914, shall not preclude or prevent such elector from voting in any election in this state; and provided further, that wherever any elector is refused registration by any registration officer such action may be reviewed by the district court of the county by the aggrieved elector by his filing within ten days a petition with the clerk of said court, whereupon summons shall be issued to said registrar requiring him to answer within ten days, and the district court shall be a expeditious hearing and from his judgment an appeal will lie at the instance of either party to the Supreme Court of the State as in civil cases; and provided further, that the provisions of this act shall not apply to any school district elections. Provided further, that each county election board in this state shall furnish to each precinct election board in the respective counties a list of the voters who voted at the election in November, 1914, and such list shall be conclusive evidence of the right of such person to vote."

Section 31 (Title 8, U. S. Code) provides:

"All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any state, territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any state or territory, or by or under its authority, to the contrary notwithstanding. (R. S., Section 2004.)"

Section 43 (Title 8, U. S. Code) provides:

"Civil Action for Deprivation of Rights. Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. (R. S., Section 1979.)"

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In the Supreme Court

of the United States

No. 900, October Term, 1933

L. W. LANE, Petitioner,

VERSUS

JESS WILSON, JOHN MOSS AND MARION PARKS,

Respondents.

BRIEF OF PETITIONER

(ON WRIT OF HABEAS CORPUS TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE TENTH CIRCUIT.)

CHARLES A. CHANDLER, Esquire,

Mustoge, Oklahoma,

Counsel for Petitioner.

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In the Supreme Court of the United States

No. 460

OCTOBER TERM, 1938.

I. W. LANE, *Petitioner,*

vs.

**JESS WILSON, JOHN MOSS AND MARION PARKS,
*Respondents.***

**(ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE TENTH CIRCUIT.)**

BRIEF OF PETITIONER ON WRIT OF CERTIORARI.

MAY IT PLEASE THE COURT:

The petitioner, I. W. Lane, respectfully shows to this Honorable Court that this matter comes on for hearing herein upon Writ of Certiorari, allowed by this court on the 12th day of December, 1938 (R., p. 103), to review a judgment and order of the United States Circuit Court of Appeals for the Tenth Circuit, rendered on the 19th day of September, 1938, affirming a judgment of the United States District Court for the Eastern District of Oklahoma, rendered and entered by said latter court on the 19th day of April, 1937, in favor of said respondents herein and against the petitioner (R., p. 24). And said petitioner respectfully submits the following brief in the premises:

A.

OPINIONS of the COURTS BELOW.

Said opinion, judgment, and order of the Circuit Court of Appeals here sought to be reviewed are set forth in the record, pages 93-101; and said opinion is reported in Volume 98, Federal Reporter (2d) at page 980.

The judgment of said Federal District Court which was affirmed by said opinion and judgment of the said Circuit Court of Appeals is set forth in the record at pages 24-26; and opinion of the trial court is found in the record, pages 59-61. Said opinion of the trial court was not officially reported.

B.

STATEMENT as to JURISDICTION.**(1) This Cause Was Within the Original Jurisdiction of the Federal District Court.**

It is provided by the second paragraph of Article VI, of U. S. Constitution, that said Constitution, and the laws of the United States which shall be made in pursuance thereof shall be the supreme law of the land (Appendix hereto, page 71).

The 14th Amendment to the Federal Constitution provides that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor * * * deny to any person within its jurisdiction the equal protection of the laws (Appendix, p. 71). The 15th Amendment provides that the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude (Appendix, p. 72).

Pursuant to said constitutional provisions, the Congress duly enacted R. S. Secs. 2004 and 1979 (U. S. C. Title 8, Secs. 31 and 43; which are set forth in the Appendix, p. 72). Said R. S. Sec. 2004 provides, in effect, that all citizens of the United States who are otherwise qualified by law to vote, shall be entitled and allowed to vote at all elections, without distinction of race, color, or previous condition of servitude; and said R. S. Sec. 1979 affords a remedy, by action at law, suit in equity, or other proper proceeding for redress, for deprivation, under color of the laws of any State, of rights, privileges, or immunities secured by said Federal Constitution and laws.

By Section 24 of the Judicial Code (U. S. C. Title 28, Sec. 41) it is provided: (1) that the District Courts shall have original jurisdiction of all suits of a civil nature, at common law or in equity * * * where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of \$3,000.00, and (a) arises under the Constitution or laws of the United States; and by paragraph fourteen * * * (14), of all suits at law or in equity authorized by law to be brought by any person to redress the deprivation under color of any law * * of any State, of any right, privilege, or immunity, secured by the Constitution of the United States, or of any right secured by any law of the United States providing for equal rights of citizens of the United States (Appendix, p. 72).

By his petition filed below (R., p. 1-10), the petitioner, as plaintiff, sought \$5,000.00 actual damages, and \$5,000.00 punitive damages from the respondents, as defendants, on account of their having deprived him of his rights to register and to vote, it appearing that said respondents were acting under color of the Statutes of the State of Oklahoma, herein alleged to be unconstitutional.

Said District Court had original jurisdiction of the action. See: *Myers, et al. v. Anderson, et al* (1915), 238 U. S. 368, 59 L. ed. 1349.

It appeared, further, that all of the parties to said action, plaintiff and defendant, were citizens and residents of the Eastern Judicial District of Oklahoma. Venue of said action properly lay in the District Court of said Federal Judicial District. Judicial Code, Sec. 52; U. S. C., Title 28, Sec. 113.

(2) Upon Appeal, the Cause Was Within the Jurisdiction of the United States Circuit Court of Appeals for the Tenth Circuit.

In support of the jurisdiction of the United States Circuit Court of Appeals for the Tenth Circuit, of said cause upon appeal, this petitioner cites and relies upon Judicial Code, Sec. 128, as amended by the Act of Feb. 13, 1925; 28 U. S. C. A., Sec. 225 (a), First Subdivision.

(3) The Matter Herein Is Within the Jurisdiction of the Supreme Court of the United States.

To review the above mentioned final judgment and decision of said Circuit Court of Appeals, petitioner on November 7th, 1938, in accordance with the rules of this Honorable Court, filed herein his Petition for Writ of Certiorari and Brief in Support Thereof; and said petition was by this Court allowed on the 12th day of December, 1938 (R., p. 103). See: Rules of the Supreme Court of the United States, Rule No. 38; Sec. 240 (a) Judicial Code, as amended by the Act of Feb. 13, 1925; 43 Stat. 938; U. S. C., Title 28, Sec. 347 (a), Amended by Act of Feb. 13, 1925

It was contended by this petitioner, both in the District Court (R., p. 7) and in the Circuit Court of Appeals

(R., pp. 79-82), and is so contended in this court, that Article 3 of Chapter 29, of Oklahoma Statutes of 1931 (Vol. I, O. S. 1931, pp. 1645-1654), is unconstitutional, and violative of the 14th and 15th Articles of Amendment to the U. S. Constitution, and violative of the aforementioned R. S. Sec. 2004 (U. S. C., Title 8, Sec. 31). The pertinent sections of said Oklahoma Statute are set forth in the Appendix hereto, pp. 73-76).

The essential section of said laws, Sec. 5654, O. S. 1931; Vol. I, O. S. 1931, p. 1646, provides, in effect, that all qualified electors of said State of Oklahoma must be registered, according to said law, to be entitled to vote in any election held in said state; and said laws also provide, in effect, that all electors who voted at the general election held in said state in 1914 should have the right to vote, irrespective of whether such electors voting in 1914 should be registered under the 1916 act or not. Said election of 1914 in the State of Oklahoma was held under the amendment to the Constitution of Oklahoma, and the corresponding statutes, known as the "Grandfather Clause" (See said "Grandfather Clause", Sec. 4a of Art. III, of Oklahoma Constitution; Vol. II, O. S. 1931, p. 1407, Sec. 13450; Sec. 5643, O. S. 1931, Vol. I, O. S. 1931, p. 1641; Appendix hereto, p. 77). Said "Grandfather Clause" provided, in effect, that no person should be permitted to vote in said state unless such person should be able to read and write any section of the Constitution of the State of Oklahoma; but said "Grandfather Clause" provided further, that no person who was on January 1, 1866, or at any time prior thereto entitled to vote under any form of government, or who resided at that time in some foreign nation, and no lineal descendent of such person, should be denied the right to vote because of his inability to so read

and write sections of such Constitution. The said "Grandfather Clause" was by this Supreme Court held to be unconstitutional: *Guinn v. United States* (1915), 238 U. S. 347, 59 L. ed. 1340.

It is contended herein by petitioner that said registration law of 1916, requiring registration of petitioner, who did not vote in the 1914 election because he was prohibited by said "Grandfather Clause", while it exempted from registration those electors who voted at the 1914 election, held under the illegal "Grandfather" law, is, in constitutional and legal effect, identical with said "Grandfather Clause", and likewise, unconstitutional.

Said judgment and opinion of the Circuit Court of Appeals, affirming the judgment of the trial court and holding said registration law to be constitutional, was rendered on the 19th day of September, 1938 (R., p. 93); 98 Fed. (2d) 980. This petitioner, by petition therefor filed November 7th, 1938, made timely petition to this Honorable Court for Writ of Certiorari, which petition was allowed on the 12th day of December, 1938 (R., p. 103).

C.

STATEMENT of the CASE.

I.

PRELIMINARY STATEMENT.

The appeal to the Circuit Court of Appeals was prosecuted by appellant Lane, a Negro citizen of Wagoner County, Oklahoma, from judgment and order of the trial court, wherein, after trial, the court instructed the jury to return a verdict against said Lane as plaintiff and in favor of the defendants (R., p. 61). In the trial court petitioner Lane, as plaintiff, sought of the defendants (respondents herein) Five Thousand Dollars (\$5,000.00) actual damages and a like sum as punitive damages for and on account of alleged deprivation of his right to register as an elector and, correlatively, of the right to vote, in violation of the Fourteenth and Fifteenth Articles of Amendment to the Constitution of the United States and of Federal laws enacted pursuant thereto, and under color of certain laws and statutes of the State of Oklahoma, alleged to be unconstitutional and void as violative of said Fourteenth and Fifteenth Amendments (See petition, R., pp. 1-11).

The trial court rendered a formal opinion (R., pp. 59-61), expressly holding that the Oklahoma Statute (O. S. 1931, Sec. 5654, Appendix, p. 73) involved and known as the Registration Law of 1916, was not violative of the Federal Constitution. The correctness of this holding and the constitutionality (under the State and Federal Constitutions) of said state statute constitute the fundamental question presented by the record herein.

This judicial inquiry is the culmination of more than twenty-five years of strife, constitutional enactment, legislation, and litigation involving the right of Negro citizens of the United States to vote in the State of Oklahoma.

Though in said state, and especially in Wagoner County therein, where the instant case arose, the Fifteenth Article of Amendment to the Constitution of the United States has been, as is by this case indisputably established, to all intents and purposes wholly repudiated, nullified, and ignored, the benign provisions and the just intent of said amendment, as well as those of the Fourteenth, are too well known to require or permit their repetition here. Further, by the sixth provision of section 3 of the Enabling Act (34 Stat. L. 269), under which it acquired the status of a state, the new State of Oklahoma entered into a sacred and solemn covenant with the United States never to "enact any law restricting or abridging the right of suffrage on account of race, color, or previous condition of servitude." (O. S. 1931, Vol. II, p. 1564.) Moreover, in words at least, the original constitution of the state (adopted in 1907) expressly adopted said Fifteenth Amendment (Okla. Const., Art. I, Sec. 6, Vol. II, O. S. 1931, p. 1386, Sec. 13411). But as to its colored citizens the state seems by these provisions, to have held the word of promise (of suffrage) to their ear, but to have broken it in the hope. Said original constitution, expressly espousing the tenets of the Fifteenth Amendment, was soon (in 1910) amended by that incongruous and cunning device known as the "Grandfather Clause" (Okla. Const., Art. III, Sec. 4a), which provided:

"13450 (Vol. II, O. S. 1931, p. 1407). *Grandfather Clause.*

"Sec. 4a. No person shall be registered as an elector of this State, or be allowed to vote in any election held herein, unless he be able to read and write any section of the Constitution of the State of Oklahoma; but no person who was, on January 1st, 1866, or at any time prior thereto, entitled to vote under any form of government, or who at that time resided in some foreign nation, and no lineal descendant of such

person, shall be denied the right to register and vote because of his inability to so read and write sections of such Constitution. * * *

Said Grandfather Clause seems significant in this inquiry as to the constitutionality of the Oklahoma Registration Law, for it is contended by petitioner that the former is the progenitor of the latter, that the latter is conceived for the same illegal purpose of circumventing the Fourteenth and Fifteenth Amendments, and that said Registration Law has the same nefarious operation and effect, i.e., the disfranchisement of Negro citizens of the United States in violation of said Amendments and of Federal laws enacted pursuant thereto (See petition, R., pp. 7-10).

The result of the election (Aug. 2, 1910) purporting to adopt said Grandfather Clause was proclaimed by the Governor on October 6, 1910 (Vol. II, O. S. 1931, p. 1407, Sec. 13450, note); and on October 26th, twenty days later, in a most exhaustive, 30-page opinion, in proceedings in error in the State Supreme Court, said law was adjudged to be constitutional and valid. *Atwater v. Hassett, et al.*, 27 Okl. 292-321, 111 Pac. 802. Just how the said case arose, or how it could reach such speedy disposition does not appear. When, however, in another case, the question of the constitutionality of the now infamous Grandfather Clause was certified to the Supreme Court of the United States this court refused to be beguiled by weasel words or to be swayed by the sophistical reasoning of *Atwater v. Hassett, supra*; and it declared said corrupt law to be violative of the Fifteenth Amendment, unconstitutional, null and void. *Guinn v. United States* (1915), 238 U. S. 347, 59 L. ed. 1340.

The oppressive operation of the Grandfather Clause (as such) being terminated by the opinion in the aforementioned *Guinn* case, forthwith the Legislature of the State

was convoked into special session, and it enacted the Registration Law of 1916, under which the Negroes of Wagoner County, Oklahoma, in the position of petitioner Lane, have been wholly, completely, absolutely, and forever disfranchised.

The original Constitution of Oklahoma, sections 1 and 6, respectively, of Art. III (Vol. II, O. S. 1931, pp. 1406, 1408, Secs. 13446, 13452), prescribed the qualifications of electors, and authorized the Legislature, when necessary, to provide by law for the registration of electors. Immediately after said *Guinn* decision, outlawing disfranchisement in the State by use of the "Grandfather Clause", the Legislature in special session enacted the 1916 Statute, which was, ostensibly, for registration of electors; but was, in intent, operation and effect, as charged by Lane, the perpetuation of the Grandfather Clause in a new disguise of words (R., p. 23). Just how effectively the new Registration Law, together with its corrupt administration, has accomplished the nefarious design of the Grandfather Clause is glaringly demonstrated by the record in the instant case:

According to the last federal census, that of 1930, of Wagoner County's total population of 22,428, Negroes constituted 6,753, or slightly more than 30% (R., p. 38). As shown by the official registration records, there were registered in the County, during TWENTY YEARS next preceding trial of the instant case, exactly TWO Negro electors; and during the entire period since said Registration Law became effective, thirteen (13) Negro electors were registered in Wagoner County (R., p. 36), but it was not shown that a single one of these 13 ever in fact was permitted to vote. In fairness to said Registration Law, as well as to the respondents administering same, it should be admitted that during the registration of 1934, precinct

registrars registered fifty (50) Negroes; however, in an inquisition (partial transcript of hearing therein, R., pp. 64-74) under said laws, instigated by respondent County Judge John Moss and conducted by respondent Jess Wilson, County Registrar, the registration of *each* of said fifty Negroes was cancelled (R., pp. 36, 64-74).

II.

ABSTRACT OF RECORD.

(a) Pleadings.

(1) *Petition of Plaintiff* (R., pp. 1-11).

The petition of plaintiff Lane (petitioner) was filed in the United States District Court for the Eastern District of Oklahoma on October 27, 1934. It was therein alleged that said plaintiff was a Negro citizen of the United States and a duly qualified elector of Gatesville Precinct No. 1, of Wagoner County, Oklahoma; that the defendants Marion Parks, Jess Wilson and John Moss were, respectively, the Precinct Registrar, County Registrar, and County Judge for said county, all residing therein; and that the action involved a Federal question, namely, the right of suffrage of plaintiff under the Constitution of the United States, the Fourteenth and Fifteenth Amendments, and the laws of the United States enacted pursuant thereto. All necessary averments as to jurisdiction of the Federal Court were made.

By said petition it was alleged that on the 24th day of October, 1934, plaintiff, being then a duly qualified elector, applied to the defendant Marion Parks, plaintiff's precinct registrar, for registration as an elector, but that said defendant refused to register said plaintiff, solely on account of his race, color, and previous condition of servitude, said

refusal by said defendant being pursuant to a conspiracy for said purpose among said defendants, acting under color of certain statutes of the State of Oklahoma, especially O. S. 1931, section 5654, *supra*, said section being part of the Oklahoma Registration Law of 1916, which said Registration Law (Sec. 5654) plaintiff alleged to be unconstitutional, null and void, violative of the Fourteenth and Fifteenth Articles of Amendment to the Constitution of the United States and also violative of the laws of the United States, to-wit, R. S. Secs. 2004, 1979.

Plaintiff further alleged that said conspiracy to disfranchise the Negroes of Wagoner County had been in force and operation since the enactment of said 1916 Registration Law, and that said conspiracy had existed among and between said defendants and their respective predecessors in office.

Plaintiff alleged that he had been damaged in the sum of \$5,000.00, and prayed for judgment in said sum for actual damages, and for like sum as punitive damages.

(2) Joint Answer of Defendants Wilson and Parks (R., pp. 11-16).

The defendants (respondents herein) Wilson and Parks filed their joint answer to petition of plaintiff, wherein they denied generally and specifically each and every allegation of said petition, except such as were specifically admitted in said answer (R., p. 11).

The defendants admitted that they were state officials, respectively, as alleged in petition of plaintiff. It was denied that a Federal question was involved. Said defendants denied any conspiracy, or any wrongful or illegal acts on their part, but alleged that their acts in the premises were under and pursuant to the Oklahoma Registration

Law of 1916, especially O. S. 1931, section 5654, which law defendants alleged to be constitutional and valid.

Said defendants in said answer further alleged that if it were true that said plaintiff was denied registration as an elector, said plaintiff had the right under said Registration Law of Oklahoma (O. S. 1931, Sec. 5654), to appeal to the District Court of Wagoner County to have reviewed the action of the precinct registrar; that the decision of the District Court of Wagoner County on said question was reviewable on appeal by the Supreme Court of the State; and that by his failure to prosecute proceedings in said state courts, as provided by said statute, said plaintiff Lane had waived his statutory (under aforementioned Acts of Congress) right herein mentioned, and should not be heard to complain in this action (R., p. 15).

It was further alleged that under said state statutes plaintiff Lane was not entitled to be registered at the registration period for said year 1934, same being a period of special registration for newly qualified electors, at which time plaintiff was not entitled to be registered, even though he possessed the necessary qualifications (R., p. 15).

The defendants contended, in effect, that relief should be denied plaintiff, because by his petition he sought inconsistent remedies, in that he prayed damages of the defendants for their refusal to register plaintiff under the Registration Laws of Oklahoma, which law plaintiff, as alleged in said answer, contended to be unconstitutional and void (R., p. 16).

It was further denied that plaintiff had been damaged, and it was prayed that his petition be dismissed (R., p. 16).

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(3) Answer of Defendant John Moss (R., pp. 17-18).

The defendant (respondent herein) John Moss filed his answer, denying the material allegations of the petition of plaintiff, as against said defendant. He denied that plaintiff had been damaged in sum of \$5000.00, and prayed that the petition be dismissed and that said defendant have judgment for his costs (R., p. 18).

(4) Replies of Plaintiff (R., pp. 18-21, 22).

Plaintiff (petitioner) filed replies, respectively, to the above mentioned answers, said replies denying material allegations of new matter in said answers, thereby making up the issues involved.

(b) Evidence.

(1) Evidence of Plaintiff (R., p. 27, et seq.)

L. W. LANE, plaintiff, testified in his own behalf substantially as follows:

That witness was approximately 70 years of age, was born in Alabama, and had lived in the town of Redbird, in the election precinct known as Gatesville Precinct No. 1, Wagoner County, Oklahoma, since 1908 (R., p. 27).

That witness voted in Alabama, and in Oklahoma in 1910 and in 1912, but that witness had not voted since 1912; he could not vote in 1914 because the Grandfather Clause was then in operation (R., p. 20); and he could not ever get registered under the Registration Law of 1916, although he has made application for registration during each registration period, commencing with that of 1916 (R., p. 28).

That during the registration period for the year 1916 witness made application for registration to one Workman,

his precinct registrar, and said Workman stated to plaintiff that he did not have the registration books—that he had returned them to some other officials (R., p. 28).

That in 1918 and also in 1920 witness made application for registration to one Mr. Atterberry, his precinct registrar at said time, who told witness on each occasion that said registrar did not have orders (from high officials) to register colored people (R., p. 28).

That, likewise, witness tried to register in 1922, again in 1924; and during each subsequent registration period (R., p. 28).

During these times when witness attempted to find the registrars he always had trouble locating them—they would usually be absent from home. Witness would have to return to their homes three or four times—sometimes about sun-up or sun-down. That when witness would locate the registrar the latter would tell him that he did not have any orders to register witness (R., p. 29).

In 1934 witness spoke to the County Registrar, Jess Wilson, about the refusal of precinct registrars to register witness. Witness had looked for a precinct registrar for three or four days, but could not find one. Then he inquired of said Wilson as to who had been appointed as registrar in plaintiff's precinct. Wilson replied that at that time he had not appointed a registrar for said precinct, but that he would appoint one within a day or two. A day or so later, after he had spoken to Wilson, witness ascertained that Parks was precinct registrar, and witness, accompanied by others, made application to Parks for registration. At said time the registration books had been open three or four days. Said books open twenty days before an election and close ten days before an election (R., p. 29).

That just before the general election of (November 6) 1934, and while the registration books were open, witness, accompanied by Washington Taylor, J. M. Jackson, E. T. Cullam, and Jim Ellis, went before Marion Parks, the precinct registrar of Gatesville Precinct No. 1, and demanded registration as an elector; that said Parks replied, "Well, I was instructed by the 'higher ups' [Jess Wilson, County Registrar, and John Moss, County Judge] not to register any colored people." Parks did not register plaintiff, nor give him a registration certificate (R., p. 29).

The testimony of ~~plaintiff~~ Lane concerning the refusal of Marion Parks, as precinct registrar, to register said Lane or those with him at the time mentioned, was corroborated by the testimony of J. A. Cullam (R., p. 30-32), by that of Washington Taylor (R., pp. 32-33), and by testimony of J. M. Jackson (R., pp. 33-34).

THE REGISTRATION RECORDS of Wagoner County, Oklahoma, for election years 1916 to 1936, inclusive, were introduced in evidence, and said records showed that in said Wagoner County, Negroes were registered as electors as follows (R., p. 36):

During the registration period of 1916, the first registration under the 1916 Registration Law, there were *eleven* Negro electors registered. There was no further registration of a Negro elector in said county until the year 1926, and in each of the years 1926 and 1928 there was registered *one* Negro as an elector. From 1928 down to 1934 there was *not a single* Negro elector registered in said County. In 1934, at the registration period of which Lane is specifically complaining, there were registered in said county fifty (50) Negro electors, but said County Registrar, Jess Wilson, struck from the record the names of each of said fifty who were so registered. To the introduction of

said Registration Records the defendants objected and saved exceptions (R., p. 36).

Plaintiff also introduced in evidence, as his "Exhibit No. 1", a transcript of proceedings had before defendant Jess Wilson, County Registrar, for cancellation of the registration of the aforementioned fifty Negro electors. To the introduction of this evidence defendants saved exceptions (R., pp. 36-37). The material parts of said transcript are set forth in the record herein at pages 64-74, and will be more particularly mentioned in this brief at pages 69-70.

PLAINTIFF'S "EXHIBIT NO. 2", U. S. Census Report for year 1930, was duly introduced in evidence (R., p. 38).

Said census report showed that the total population of Wagoner County, Oklahoma, in 1930 was 22,428, of whom 6,753 were Negroes; that Porter township in said county had a *white* population of 925, and a *Negro* population of 939; that Tullahassee township had a *white* population of 298, and a *Negro* population of 1,537; that Gatesville township had a *white* population of 1388, and a *Negro* population of 920; and that the town of Redbird, where plaintiff Lane resided (and of which he had been Mayor, R., p. 39), had a population of 218, all of whom were Negroes. The population of the other townships and towns of said Wagoner County, by races, is shown by said census report. The defendants objected to said evidence, and saved exceptions to the admission thereof (R., p. 37).

PLAINTIFF'S EXHIBIT NO. 3, Summary of Age of Electors Registered in Gatesville Election Precinct No. 1, of Wagoner County, during the registration of 1934, as shown by the registration records, was introduced in evidence (R., p. 74).

This summary shows that during the registration period of 1934, when defendant Parks refused to register plaintiff Lane, said Parks, as registrar, registered 149 electors (all white), 18 of whose ages were 21 years, 18 were 32 years of age, and the ages of the others ranged from 20 years up to 60 years and over (R., p. 74).

Plaintiff announced that he did rest (R., p. 39).

(2) Evidence on Behalf of Defendants (R., p. 39, et seq.)

JAMES L. PACE, witness for defendants, testified substantially as follows (R., p. 39, et seq.):

That in 1916 witness lived in Gatesville Precinct No. 1, Wagoner County, Oklahoma, and was Precinct Registrar in said precinct for the entire year of 1916. That witness knew plaintiff Lane, but that said Lane did not in 1916 present himself to witness for registration (as an elector) (R., p. 40).

On cross examination, the witness James L. Pace testified that he did not register any Negroes in 1916; that no Negroes applied to witness in 1916 for registration; and that witness did not refuse any Negroes registration. That in 1916 witness had only a passing acquaintance with plaintiff Lane, and can remember distinctly that 21 years ago said Lane did not apply to witness for registration. That witness registered all Negro voters who applied in that precinct; but does not remember how many Negroes witness registered (R., p. 40).

The testimony of the witness James L. Pace to effect that he was Precinct Registrar of Gatesville Precinct No. 1, Wagoner County, during the year 1916 was corroborated by the testimony of five other witnesses for defendants (R., pp. 41-42).

J. L. Pace, witness for defendants, testified further on cross examination as follows (R., p. 43, *et seq.*):

That witness remembers registering a Mr. Puissner, with whom witness was well acquainted. That witness did not know how long Mr. Puissner had been living in said precinct, he having lived near witness all the while up to registration (in 1916). That in November, 1916, witness registered said Puissner who was 49 years of age, and a full-blooded Indian; and witness registered a Mr. Childers, white, 24 years of age (R., p. 44).

It was shown in open court that the ages of electors registered, as shown by Registration Records of Wagoner County, varied from 21 years up to 80 years (R., p. 44).

STOUT ATTERBERRY, witness for defendants, testified substantially as follows (R., p. 42, *et seq.*):

That witness lived in Gatesville Precinct No. 1, Wagoner County, Oklahoma, and had lived there for 25 years. That witness registered in 1916, before one Jim Pace as precinct registrar. That witness was not registrar in 1916, and does not believe Lane applied to witness for registration in said year.

On cross examination, the witness Stout Atterberry testified substantially as follows (R., p. 42, *et seq.*):

That witness was precinct registrar in 1920, just before the primary election, but that witness was not registrar for the entire period, said witness having served as registrar for *part* of said period. That the registration books were sent back to witness just before the general election, at which time witness was out working; and wife of witness advised him that the registration books had come, but that witness refused to serve further for that registration period. That on that night or the next night,

plaintiff Lane and others came to home of witness while the registration books were there, to be registered, but that witness did not register Lane nor anybody else at said time. That the registration books were at the home of witness a day or two, but that someone got them while witness was absent. Witness understood later that one Workman got said registration books (R., p. 43).

JESS WILSON, defendant, testified for defendants substantially as follows (R., p. 45, *et seq.*):

That at time of trial witness lived in Tulsa County, but from the 3rd day of June, 1920, until 1935, witness lived in Porter, Wagoner County, Oklahoma. That in 1932 witness succeeded one Lawrence as County Registrar of Wagoner County, and served as such from 1932 until 1935.

That witness became acquainted with plaintiff Lane about 1920. That before the general election in 1934 Lane and three or four other persons came to witness, and inquired of witness as to who was going to be precinct registrar for Gatesville Precinct No. 1; and Lane inquired if witness had appointed one Lawrence; witness told Lane that said Lawrence had resigned as precinct registrar, but that witness would try to appoint another registrar on that day (R., p. 45).

That on the day following the above conversation with Lane witness appointed the defendant Marion Parks, as Precinct Registrar in Gatesville Precinct No. 1, northwest of Redbird, Oklahoma. That said Parks, a well known citizen of that community, served as registrar during that period of registration.

That witness did not in 1934, or at any other time, instruct any precinct registrar not to register Negro electors; nor did witness enter into any understanding to said effect.

That when witness gave Parks the registration books, witness told him that Mr. Moss (respondent) would instruct him in regard to the registration laws. That at said time Mr. Moss was County Judge of said Wagoner County (R., p. 46).

That witness did not have any conversation, nor agreement, nor understanding with Judge Moss as to the instructions the latter was to give Parks (R., p. 46).

On cross examination the defendant Jess Wilson testified (R., p. 46):

That while witness was County Registrar some Negroes were registered, but, at the request of Judge Moss and two others, witness, as County Registrar, struck said names (of registered Negroes) from the record. That some of the persons whose names were stricken from the registration record were registered by a man named Goddard, whom witness had appointed as (precinct) registrar. That in the majority of cases in appointing registrars they were given commissions, but that witness does not believe said Goddard had a commission, he having been appointed just by oral agreement (R., p. 46).

That the names stricken from the registration record, as aforesated, were stricken "because of a *higher decision* (by Jess Wilson) on the question of the legality of their being competent voters." (Italics and parentheses, ours.) (R., p. 46). Transcript of part of said proceedings before witness, as County Registrar, is set forth in record, pages 64-74.

JUDGE JOHN MOSS, defendant (respondent), testified on behalf of defendants substantially as follows (R., p. 47, *et seq.*):

That witness was County Judge of Wagoner County,

Oklahoma, and had been such since January, 1933; that witness was representative in the Legislature in 1910, becoming County Attorney of Wagoner County by appointment in December, 1919, that being the first time witness was County Attorney of Wagoner County. That witness was not County Attorney of Wagoner County in 1916. That witness did not as charged by plaintiff, enter into any conspiracy, understanding, or agreement with anyone to deprive plaintiff Lane or other Negroes in Gatesville Precinct No. 1 of their right or *alleged right* to vote. That witness did not ever instruct his co-defendant Marion Parks in any way whatsoever not to register plaintiff or other colored persons (R., p. 47).

That co-defendant Parks advised with witness about his duties as registrar, immediately prior to his service as such in 1934. That witness had a letter which had been turned over to him by one Biggerstaff, a newspaperman in Wagoner. Witness just read said letter to Parks, and when witness was through reading said letter to him he told Parks that said letter practically stated the law as witness understood it, and as witness has been interpreting it since 1920. This letter, from a Negro "Democratic editor" in Muskogee to said Mr. Biggerstaff, and purporting to give to the Oklahoma Registration Laws of 1916 an interpretation similar to that given them by the defendants (respondents) is set forth in the record at page 48.

MARION PARKS, defendant (respondent), testified as witness for defendants substantially as follows (R., p. 49, *et seq.*):

That witness was Precinct Registrar in 1934 in Gatesville Precinct No. 1, in Wagoner County, Oklahoma. That witness knows plaintiff Lane. That witness did not state to Lane and others, on the occasion to which Lane referred

in his testimony, that witness had been instructed by the "higher ups" not to register the Negroes. That witness did not say anything of that sort, that witness did not tell Lane that witness had been instructed by Judge Moss or by Jess Wilson not to register Negroes. That nothing of that sort occurred (R., p. 49).

That witness remembered Judge Moss reading to witness from the letter mentioned in Moss' testimony. That witness did not remember the exact words had with Judge Moss in said conversation, but did remember inquiring of Judge Moss about registering people who had become 21 years of age, and Judge Moss stated to witness "You register all that have become twenty-one since last registration." That Judge Moss advised witness to register all whom he thought to be legal voters. That at said time witness did not have any understanding, agreement, conspiracy or anything of that sort with the defendants, nor with either of them, whereby it was understood that witness was to prevent Negroes from registering. That witness did not have any malice or ill feeling against these colored people. That witness was acting in good faith, honestly and fairly trying to follow the law, treating all alike, telling them the law, whether white or colored (R., p. 50).

On cross examination, the defendant Marion Parks testified substantially as follows (R., p. 50, *et seq.*):

That witness did register white people from 21 years of age up, the exact number, witness being unable to remember, nor does witness remember their ages, nor all of the people registered at that time. That witness did not register plaintiff Lane, because Lane had no papers showing that he had ever registered. That witness inquired of Lane if he had ever registered, to which Lane replied in the negative; and witness told Lane, "I can't

register you, if you have never registered, unless you have become 21 since the last registration." (R., p. 50). That witness asked the white people whom he registered the same question. That said white people had papers to prove that they were eligible voters. That the white electors registered by witness did not have certificates, they had proof they were eligible voters—they had witnesses to prove it. The basis of the eligibility was that they had been in the state one year, in the county six months, and in the township thirty days, witness meaning those electors who had just become 21 years of age and had no certificate of registration. Those over 21 had certificates from their precincts and they had voted. That witness registered 86 electors that proved that they had registered (R., p. 50).

That witness did not mean to tell the court and jury that every person over 21 years of age, whom witness registered, was a person who had a transfer—they had proved in different ways that they were legal voters. Some had lived in the precinct different lengths of time, but there were none that had lived in the precinct that had not registered since they moved in, since the last registration. All that witness registered in 1934, were those that had moved in since the last registration period. That those electors who moved in had to prove to witness that they were legal voters, and in other cases they had registration certificates, and exhibited them to witness (R., p. 51).

(3) *Rebuttal evidence of plaintiff (R., p. 51).*

I. W. LANE, plaintiff, testified on rebuttal that the statement of Mr. Parks to the effect that he (Parks) said nothing to witness about an order from the "higher ups" was false.

Both sides announced in open court that they did rest (R., p. 51).

(c) Proceedings on Verdict, Opinion of Trial Court, Motion for New Trial, and Judgment.

(1) ~~Motion for a Directed Verdict~~ in favor of the defendants and each of them, was by them made in open court (after argument and request by plaintiff for instructions), said motion of defendants was sustained, to which plaintiff objected and saved exceptions (R., pp. 52, 62).

(2) Request for Instructions to the jury was made by plaintiff in writing. Each separate written request for instruction made by plaintiff was upon the theory that the qualifications of an elector were those prescribed by the Oklahoma Constitution (Art. III, Sec. 1, Oklahoma Const.; O. S. 1931, Sec. 13446); whether there was a conspiracy among the defendants; and upon the question of damages (R., pp. 52-58); and that the Oklahoma Registration Law (Sec. 5654) violated the Fourteenth and Fifteenth Amendments. The trial court refused to give any of the instructions requested by plaintiff, to the refusal of each of which plaintiff objected and saved exceptions (R., pp. 52-58).

(3) Opinion of trial court was rendered by the judge in deciding said case (R., pp. 58-61). In its opinion the trial court stated " * * * The sole question pertinent to the determination of the issues in this case, whether section 5654, Compiled Statutes 1931, is a valid statute and constitutional under the Fourteenth and Fifteenth Amendments to the Constitution of the United States * * * " (R., p. 59). By said opinion the trial court found said statute to be constitutional and valid and, accordingly, directed the jury to return a verdict for the defendants and against plaintiff (R., p. 61). Such verdict was duly returned and filed in

open court (R., p. 61), to all of which plaintiff objected and saved exceptions.

(4) Motion for new trial was in due time and form filed by plaintiff, and therein were alleged errors according to the theory of the case as contended by plaintiff, hereinabove set forth (R., pp. 62-63). Said motion for new trial was (in journal entry) denied by the trial court, to which plaintiff objected and saved exceptions (R., p. 64).

(5) Judgment was entered in favor of the defendants and against plaintiff, to all of which plaintiff (this petitioner) objected and saved exceptions (R., pp. 24-26); and plaintiff in open court gave notice of his intention to appeal to the Circuit Court of Appeals.

(d) Proceedings to Perfect Appeal.

In the trial court, and at the same time of the rendition of final judgment, plaintiff filed in due and proper form his petition for appeal (R., pp. 77-78); assignment of errors and prayer for reversal (R., pp. 79-82), by said assignment of errors plaintiff, in effect, assigning the errors specified herein, *infra*, pages 28-29, and also bond upon appeal (R., pp. 82-83). In open court order was made allowing said appeal (R., pp. 83-84); the appeal bond was approved (R., p. 83); and citation was duly issued and in open court served upon the defendants (R., pp. 84-85).

The bill of exceptions in said court was duly prepared, settled and filed (R., pp. 26-76); and the appeal herein was duly docketed in the Circuit Court of Appeals, pursuant to 28 U. S. C., Secs. 225 (1); Judicial Code, Sec. 128 amended by Act of Feb. 13, 1925; and pursuant to the rules of said Court in such case made and provided.

(c) Opinion and Judgment of the Circuit Court of Appeals.

On September 19th, 1938, said United States Circuit Court of Appeals rendered its opinion, affirming the judgment of the trial court, and holding the aforementioned registration statutes of the State of Oklahoma not to be in violation of the Constitution of the United States (R., p. 93-101); and on said date said Circuit Court of Appeals rendered its judgment, to the effect aforestated (R., p. 101). To review said opinion and judgment of the Circuit Court of Appeals, this petitioner, on November 7th, 1938, filed in this court his Petition for Writ of Certiorari; which Writ of Certiorari was by this court granted on December 12th, 1938; and said cause is now before this Honorable Court on said Writ of Certiorari.

D.

SPECIFICATION of ERRORS.

The errors assigned by this petitioner upon appeal to the Circuit Court of Appeals, are set forth in the record at pages 79-82; and the errors specified in the Petition for Writ of Certiorari herein are to similar effect (Petition for Writ of Certiorari, p. 10). The effect of said assigned and specified errors, respectively, intended to be urged herein by respondent are herein specified as follows, to-wit:

I.

The opinion of the Circuit Court of Appeals herein is so irregular and patently erroneous, and said court in ignoring controlling decisions of this Supreme Court of the United States, so far departed from the accepted and usual course of judicial proceedings, as to warrant a reversal of the judgment of said Circuit Court of Appeals.

II.

It appearing from the face of the Oklahoma Registration Law of 1916, as well as from the operation of said law as disclosed by the record herein, that said law is an attempted revitalization of the illegal Grandfather Clause (held invalid by this Court in the *Guinn* Case); and that said Registration Law is the same invalid law in a new disguise of words, having the same discriminatory and unconstitutional intent, operation, and effect, and violative of the 15th Article of Amendment to the Constitution of the United States; the Honorable Circuit Court of Appeals for the Tenth Circuit erred in affirming the judgment of the trial court, and in holding and adjudging that said Registration Law is valid and not unconstitutional.

III.

The said Registration Law of the State of Oklahoma, as made and enforced by the State, abridges the

privileges and immunities of petitioner Lane and of other citizens of the United States of his color and similarly situated, and deny them the equal protection of the laws; said Registration Law is violative of the 14th Article of Amendment to the Constitution of the United States, and said issue was duly raised in said court; and said Honorable United States Circuit Court of Appeals for the Tenth Circuit erred in holding and adjudging said Registration Law to be valid and constitutional without in any manner passing upon said issue so made under the 14th Article of Amendment to the Constitution of the United States.

IV.

It appearing that petitioner Lane was duly qualified as an elector under Section 1 of Article III of Oklahoma Constitution (Vol. II, O. S. 1931, p. 1406, Sec. 13446; Appendix hereto, p. 76) but that pursuant to said Oklahoma Registration Law of 1916, as enforced by respondents, said petitioner was forbidden to register as an elector, though so duly qualified, and for said reason said Registration Law violated said provision of said state Constitution; and alleged error to said effect was duly assigned in the Circuit Court of Appeals; and said Circuit Court of Appeals erred in holding said Registration Law to be valid and constitutional, without in any manner observing said issue so made under the state Constitution.

V.

Upon the trial there was adduced abundant evidence of a conspiracy between and among the respondents, acting pursuant to said state laws, in the deprivation from petitioner of his rights under the constitution and laws of the United States; and said Circuit Court of Appeals committed error in holding and adjudging that there was no conspiracy, said question being properly determinable by a jury, and not by the court; and in so doing the Circuit Court of Appeals violated the 7th Amendment.

E.

ARGUMENT.

PROPOSITION I.

The opinion of the Circuit Court of Appeals herein is so irregular and patently erroneous, and said court, in ignoring controlling decisions of this Supreme Court of the United States, so far departed from the accepted and usual course of judicial proceedings, as to warrant a reversal of the judgment of said Circuit Court of Appeals.

It is charged in the petition of plaintiff (R., p. 9) that said Oklahoma Registration Law, Sec. 5654, O. S. 1931, is "an illegal and cunning attempt to achieve the illegal purpose sought by the grandfather clause and to evade the effect of the decision of the Supreme Court of the United States" in *Guinn v. United States*, *supra*. This contention is fully established, both by a careful comparison of said two laws (see them: Appendix, pp. 74, 77), and by consideration of the results they have, respectively, produced. Said Grandfather Clause purported to establish a universal literacy test, but exempted therefrom the favored class consisting of those (whites) who could vote on January 1, 1866, and their lineal descendants.

Said registration law, Sec. 5654, O. S. 1931, purports to require universal registration as a prerequisite to the right of suffrage, but exempts therefrom the same favored class, the white electors, who were favored by the Grandfather Clause, by continuing to those electors the advantage they enjoyed under the void grandfather law in effect at the time of the 1914 election.

In the opinion in the case of *Guinn v. United States*, *supra*, the Grandfather Clause was held unconstitutional, not because the State was without power to establish a lit-

eracy test, but because of the exemption from the literacy test of those coming within the classification of January 1, 1866.

Similarly, this petitioner has nowhere contended that the mere requirement of universal registration would violate any federal constitutional provision; but said petitioner did, and does, most emphatically insist that it is unconstitutional for the Oklahoma registration statute to require registration of those electors, who, like petitioner Lane, were duly qualified but were prevented by an unconstitutional law from voting at the 1914 election, permitting such registration within one ten-day period during a lifetime; and at the same time to exempt from registration those who enjoyed an illegal and unconstitutional advantage at said 1914 election.

The opinion of the Circuit Court of Appeals (R., p. 100) states with absolute finality:

"Certainly there is nothing *on the face* of the registration statute that even tends to support appellant's claim of discrimination between white and Negro electors, * * *." (Italics ours.)

That the above observation (as to the "face" of the registration law) is of no significance in this judicial inquiry appears from the same opinion (R., p. 101):

"It may be, and we take it as true, that inasmuch as the so-called grandfather clause in the Constitution of Oklahoma had not been declared void as violative of the Fifteenth Amendment until 1915 no Negroes voted at the 1914 election * * *."

And said observation is nothing more than a re-statement of the proposition wholly repudiated by the opinion of Mr. Chief Justice WHITE in the *Guinn* case, *supra*. Said the learned Chief Justice (238 U. S. 347, at p. 360, 59 L. ed. 1340, at p. 1346):-

"The real question involved, so the argument of the Government insists, is the repugnancy of the standard which the amendment makes, based upon the conditions existing on January 1st, 1866, because *on its face and inherently considering the substance of things, that standard is a mere denial of the restrictions imposed by the prohibitions of the 15th Amendment, and by necessary result re-creates and perpetuates the very conditions which the Amendment was intended to destroy.*" (Italics ours.)

And at page 364 of the U. S. Reporter, page 1348 of the L. ed.:

"It is true it contains no express words of an exclusion from the standard which it establishes of any person on account of race, color, or previous condition of servitude, prohibited by the 15th Amendment, but the standard itself inherently brings that result into existence since it is based purely upon a period of time before the enactment of the 15th Amendment, and makes that period the controlling and dominant test of the right of suffrage."

What difference there may be between the Grandfather Clause and the registration law is a difference in form and phraseology—none in substance—the former established a standard based purely upon a period of time before the enactment of the 15th Amendment, and sought to perpetuate conditions prohibited by said Amendment; and the registration law established a standard based upon a period of time (1914) when said Amendment was flagrantly disregarded and violated, and sought to perpetuate said standard despite the mandate of the Supreme Court in said *Guinn* case, *infra*.

Not only is said registration law of 1916 shown to be, in legal and constitutional contemplation, identical with the Grandfather Clause, and its administration shown by

the record herein to have achieved a similar result, but said opinion of the Circuit Court of Appeals fecites in support of said registration law the very reasoning offered in support of the Grandfather law itself. In the opinion of the Supreme Court of Oklahoma, purporting to uphold the original Grandfather Clause, *Atwater v. Hassett, et al.* (1910), 27 Okl. 292, at p. 310, this language was employed:

"In *Pope v. Williams, et al.*, 193 U. S. 621, 24 Sup. Ct. 573, 48 L. ed. 817, Mr. Justice PECKHAM, in delivering the opinion of the court, said:

"* * * In other words, the privilege to vote in a state is within the jurisdiction of the state itself, to be exercised as the state may direct, and upon such terms as to it may seem proper, provided, of course, no discrimination is made between individuals, in violation of the Federal Constitution."

And in the opinion of the Circuit Court of Appeals below (R., p. 100), this language is found:

"In *Pope v. Williams*, 193 U. S. 621, the court said:

"In other words, the privilege to vote in a State is within the jurisdiction of the State itself, to be exercised as the State may direct, and upon such terms as to it may seem proper, provided, of course, no discrimination is made between individuals in violation of the Federal Constitution."

In said *Atwater-Hassett* opinion, at page 313 of 27 Oklahoma Reporter:

"In practically every state of the Union, on January 1, 1866, persons were disqualified from voting who had been convicted of infamous crimes, unless such disqualification had been removed, etc. In addition, an alien residing in this country on January 1, 1866, neither having become a naturalized citizen nor having declared his intention to become a citizen of the United

States, was not entitled to vote in any of the states. * * * Such alien residing in the United States on January 1, 1866, neither being entitled to vote in the place of his residence nor under any organized government where he had previously resided or been a citizen of, and his decendants, would also be subject to this educational qualification, coming within the excluded class as of the date of January 1, 1866."

In the opinion of the Circuit Court of Appeals below (R., p. 101):

"Under Section 5654 all who voted at the election in 1914 were placed on the registration books and certificates were issued to them by the registrars without applications therefor. It may be, and we take it as true, that inasmuch as the so-called grandfather clause in the Constitution of Oklahoma had not been declared void as violative of the Fifteenth Amendment until 1915 no Negroes voted at the 1914 election, but at least many of them became qualified electors prior to the registration period in 1916, and Section 5652 gave notice that no elector would be permitted to vote at any election unless he should register as provided by the act. *There were probably also some whites who were qualified to vote at the 1914 election who did not vote. They were on the same footing as to registration as were the qualified Negroes. There was no distinction between them.* Any elector, white or Negro, who applied and was denied registration, had the same right to carry the issue thus made to the Supreme Court for determination." (Italics ours.)

Said *Atwater v. Hassett* opinion was relied upon by the defendants in the *Guinn* case, *supra*, and it was wholly repudiated by the decision therein rendered by this Court. See note to said opinion, 59 L. ed. 1340, at page 1341. That this petitioner cited and relied upon said controlling *Guinn* opinion by this court appears from a recitation, in said opinion of the Circuit Court of Appeals, of the contention.

of petitioner (R., p. 99). Thus, said opinion of the Circuit Court of Appeals tacitly follows an opinion of a state court, which state court opinion had been wholly repudiated by the decision of this Supreme Court of the United States; and said opinion of the Circuit Court of Appeals fails in anywise even to mention said *Guinn* decision which was directly in point and controlling, or any other respectable authority, and it fails in anywise to observe other decisions of this Court upon the same proposition. See also: *Myers v. Anderson* (1915), 238 U. S. 368, 59 L. ed. 1349; Supreme Court Rule 38, par. 3(b); 87 Univ. of Penn. Law Review, January, 1939, p. 348, discussing said opinion of the Circuit Court of Appeals hereunder reviewed, and citing authorities.

PROPOSITION II.

It appearing from the face of the Oklahoma Registration Law of 1916, as well as from the operation of said law as disclosed by the record herein, that said law is an attempted revitalization of the illegal Grandfather Clause (held invalid by this Court in the *Guinn* case); and that said Registration Law is the same invalid law in a new disguise of words, having the same discriminatory and unconstitutional intent, operation, and effect, and violative of the 15th Article of Amendment to the Constitution of the United States; the Honorable Circuit Court of Appeals for the Tenth Circuit erred in affirming the judgment of the trial court, and in holding and adjudging that said Registration Law is valid and not unconstitutional.

Point 1. *Said Section 5654, O. S. 1931, is by its legal effect violative of the 15th Amendment and violative of R. S. Sec. 2004; and the opinion of the Circuit Court of Appeals, holding said law to be constitutional and valid, is contrary to the decision of this court in the case of Guinn v. United States, supra.*

It appears that petitioner Lane was duly qualified as an elector, and actually voted in the State of Oklahoma prior to the Grandfather Clause (R., p. 27); that during the existence of said Grandfather Clause, and before it was invalidated by the decision in the *Guinn* case, *supra*, said petitioner, on account of said Grandfather Clause, was unable to vote (R., p. 28). It appears further that during every registration period since the enactment of said Registration Law of 1916, said petitioner has striven, unsuccessfully, to be registered (R., p. 28). The refusal of registration of petitioner for which refusal damages were sought in the instant case was made during the registration period, under state law, just prior to the general election of 1934, at which election members of the Congress of the United States, as well as state and local officers, were to be voted upon. Accordingly, there does not arise in this inquiry any question as to the applicability of Federal laws to said election and the registration pertaining thereto.

At the outset of any discussion of the constitutionality of the Oklahoma Registration Law of 1916, or of Section 5654 thereof, it is by this petitioner specifically admitted that the various states, so far as the Federal Constitution is concerned, have plenary power and jurisdiction in prescribing the qualifications of the electors, or in providing for their registration; the only limitation being that the states must not infringe the inhibitions of the 14th and 15th Articles of Amendment to the Constitution of the United States. This was specifically pointed out by Mr. Chief Justice WHITE in the opinion in *Guinn v. United States*, *supra*; and this proposition—both as to the extensive power of the states, and as to the inexorable effectiveness of the limitations imposed by said amendments—is too universally accepted by both bench and bar to require argument or to permit extended discussion.

Accordingly, petitioner admits that Sec. 5652, O. S. 1931, in and of itself, and considered independently of Secs. 5654 and 5657, is constitutional and valid, and does not in anywise violate either of the aforesaid amendments to the Constitution of the United States. Said Sec. 5652, provides;

"5652. Registration Mandatory.

"It shall be the duty of every qualified elector in this state to register as an elector under the provisions of this Act, and no elector shall be permitted to vote at any election unless he shall register as herein provided, and no elector shall be permitted to vote in any primary election of any political party except of the political party of which his registration certificate shows him to be a member." (Vol. I, O. S. 1931, p. 1646.)

Petitioner further admits that had said Sec. 5654 carried out the requirement of registration "of every qualified elector", and enforced the requirement that "no elector shall be permitted to vote in any election unless he shall register"—applying to all electors alike and providing for reasonable opportunity for registration—there would be no sound, constitutional objection to said Sec. 5654. But here comes the rub—there is buried down in the verbiage of said Sec. 5654 the following proviso, to-wit:

"* * * And provided that it shall be the mandatory duty of every precinct registrar to issue registration certificates to every qualified elector who voted at the general election held in this state on the first Tuesday after the first Monday in November, 1914, without the application of said elector for registration, and, to deliver such certificate to such elector if he is still a qualified elector in such precinct and the failure to so register such elector who voted in such election held in November, 1914, shall not preclude or prevent such elector from voting in any election in this state * * *. Provided further, that each county election board in

this state shall furnish to each precinct election board in the respective counties a list of the voters who voted at the election in November, 1914, and such list shall be conclusive evidence of the right of such person to vote."

Sec. 5657, O. S. 1931, regulating registration, provides, in part, as follows:

"* * * Except in the case of a qualified elector who voted at the general election held in this state on the first Tuesday after the first Monday in November, 1914, in which case it shall be the mandatory duty of the precinct registrar to register such voter and deliver to such voter a registration certificate and the failure to so register such elector and to issue such certificate shall not preclude or prevent such elector from voting at any election in this State. * * *" (Vol. I, O. S. 1931, p. 1648.)

Sec. 1, of Article III, of the Constitution of Oklahoma prescribed the qualifications of an elector as follows:

"Section 1. The qualified electors of this State shall be citizens of the United States, citizens of the State, including persons of Indian descent (native of the United States), who are over the age of twenty-one years, and who have resided in the State one year, in the County six months, and in the election precinct thirty days, next preceding the election at which such elector offers to vote. Provided, that no person adjudged guilty of a felony, subject to such exceptions as the Legislature may prescribe, nor any person, kept in a poorhouse at public expense, except Federal, Confederate and Spanish-American ex-soldiers or sailors, nor any person in a public prison, nor any idiot or lunatic, shall be entitled to register and vote." (Vol. I, O. S. 1931, p. 1406, Sec. 13446.)

When he applied to the respondent Parks for Registration, petitioner Lane was duly qualified as elector un-

der the above-quoted constitutional provision, and was "otherwise" qualified, under R. S., Sec. 2004; but said respondent Parks refused to register him because, as contended by the respondent, petitioner Lane had not registered during the ten-day period in 1916, as provided by said Section 5654; and because, as testified by petitioner and others (R., p. 29), Parks had orders from the "higher ups", Moss and Wilson, not to register Negroes. In other words, the purport of said Section 5654, as well as the contention of the respondents, seems to be that petitioner Lane, as well as other Negroes in Oklahoma circumstanced as he was, formerly disfranchised by the unlawful Grandfather Clause, was by the terms of said statute granted *only ten days in this life* within which to register and preserve the privilege of franchise; otherwise, he was to be disfranchised forever; while the electors *who voted in the election of 1914*, obviously *white*, for only whites could vote under the illegal Grandfather Law, could continue to vote without being registered at all.

The very statement of the monstrous proposition that a considerable element of the duly qualified electorate of a state was bound, by the terms of a state statute, to register within a single ten-day period, under penalty of being *forever disfranchised*; while others, *without* any registration, had preserved to them, by the terms of the same statute, the privilege of franchise forever, would arouse suspicion. Why would the state require any elector, "otherwise" duly qualified, to register within a single, ten-day period, under the penalty of being forever disfranchised?

When to this arbitrary discrimination, patent upon the face of the statute, is added the cunning, deceitful and vexatious manner in which it is administered—precinct registrars playing "hide-and-go-seek" with Negro electors seeking registration (R., p. 29); the colored electors having

no definite way of knowing who is the precinct registrar (R., pp. 43, 45); county registrars failing or delaying to appoint precinct registrars in precincts with considerable Negro electors, or failing to provide them with registration books (R., p. 45); or appointing registrars who refuse to act (R., p. 45); or registrars requiring orders from "higher-ups" (those in charge of the corrupt political machine) before registering Negroes (R., p. 29)—with the entire "machinery"—or machination—in actual operation, there can be no doubt in any just mind that said law infringes the inhibitions of the 15th Amendment, and also those of the 14th.

This case is, *mutatis mutandis*, and in legal and constitutional contemplation, identically the same case before the Supreme Court of the United States in *Guinn v. U. S.* (Okl. 1915), 238 U. S. 347, 59 L. ed. 1340, 1347; and the principles announced by the learned Chief Justice in that opinion are imperatively applicable to this case and compellingly dispositive of the issue it presents. Said the learned Chief Justice in the opinion of this Court in the *Guinn* case, *supra*:

"The inquiry, of course, here is, does the amendment as to the particular standard which this heading embraces involve the mere refusal to comply with the commands of the 15th Amendment as previously stated? This leads us, for the purpose of the analysis, to recur to the text of the suffrage amendment. Its opening sentence fixes the literacy standard which is all-inclusive since it is general in its expression and contains no word of discrimination on account of race or color or any other reason. This, however, is immediately followed by the provisions creating the standard based upon the condition existing on January 1, 1866, and carving out those coming under that standard from the inclusion in the literacy test which would have con-

trolled them but for exclusion thus expressly provided for. The provision is this:

‘But no person who was, on January 1st, 1866, or at any time prior thereto, entitled to vote under any form of government, or who at that time resided in some foreign nation, and no lineal descendant of such person, shall be denied the right to register and vote because of his inability to so read and write sections of such Constitution.’

“We have difficulty in finding words to more clearly demonstrate the conviction we entertain that this standard has the characteristics which the government attributes to it than does the mere statement of the text. It is true it contains no express words of an exclusion from the standard which it establishes of any person on account of race, color, or previous condition of servitude, prohibited by the 15th Amendment, but the standard itself inherently brings that result into existence since it is based purely upon a period of time before the enactment of the 15th Amendment, and makes that period the controlling and dominant test of the right of suffrage. In other words, we seek in vain for any ground which would sustain any other interpretation but that the provisions recurring to the conditions existing before the 15th Amendment was adopted and the continuance of which the 15th Amendment prohibited, proposed by in substance and effect lifting those conditions over to a period of time after the Amendment, to make them the basis of the right to suffrage conferred in direct and positive disregard of the 15th Amendment. And the same result, we are of opinion, is demonstrated by considering whether it is possible to discover any basis of reason for the standard thus fixed other than the purpose above stated. We say this because we are unable to discover how, unless the prohibitions of the 15th Amendment were considered, the slightest reason was afforded for basing the classification upon a period prior to the

15th Amendment. Certainly it cannot be said that there was any peculiar necromancy in the time named which engendered attributes affecting the qualification to vote which would not exist at another and different period unless the 15th Amendment was in view." *Guinn v. U. S.* (1915), 238 U. S. 347, 59 L. ed. 1340, at p. 1347.

The Oklahoma Constitution, Article III, Sec. 6 (Vol. II, O. S. 1931, p. 1408, Sec. 13452), provided:

"Sec. 6. In all elections by the people the vote shall be by ballot and the Legislature shall provide the kind of ticket or ballot to be used and make all such other regulations as may be necessary to detect and punish fraud, and preserve the purity of the ballot; and may, when necessary, provide by law for the registration of electors throughout the state or in any incorporated city or town thereof, and, when it is so provided, no person shall vote at any election unless he shall have registered according to law."

Said Grandfather Law having been declared violative of the 15th Amendment, unconstitutional and invalid; in the *Guinn* case, *supra*, the legislature of the state seemed to consider that the proper way, under the above quoted state constitutional provision, to keep the ballot "pure" was (as it had been under the Grandfather Law) to keep it "white". Accordingly, in special session, it enacted the present Registration Laws of 1916, declaring an emergency and providing that said law should become effective, immediately (Vol. I, O. S. 1931, p. 1647). The heart and essence of said registration laws, so far as the present question of constitutionality is concerned, is embodied in Sec. 5654, Vol. I, O. S. 1931, p. 1646, set forth in full in Appendix hereto, page 74, and this entire controversy centers around the question whether said Sec. 5654 is unconstitutional, as violating the 14th and 15th Amendments to the Consti-

tution of the United States, and further, whether said section is an unwarranted and unconstitutional (under the State Constitution) restriction of the qualification of an elector, as provided by Section 1, Article III of the State Constitution (Vol. II, O. S. 1931, p. 1406, Sec. 13446; Appendix, p. 76). The question of the validity of said section under the State Constitution will be discussed in this brief under Proposition IV, *infra*, page 59.

In legal and constitutional contemplation, Sec. 5654 is identical with the original Grandfather Clause—neither by express terms discriminated against the Negro by referring to color. Each purported to establish a standard, which standing alone, would be valid—the Grandfather Law imposing a literacy test; and the 1916 law requiring universal registration. Each purported to exempt from the pretended universal standard a preferred element of the electorate—the Grandfather Clause exempted those who could vote on January 1st, 1866, and their descendants, etc., in other words, those who had never been under slavery, those who were white; Sec. 5654 exempted those who had voted in 1914, in other words, those who had never been disfranchised by the Grandfather Law, those who were white. So far as the right of suffrage of Negroes was concerned, the Grandfather Clause perpetuated the disabilities of slavery, despite the 15th Amendment: Sec. 5654 sought to perpetuate the disability of the Grandfather Law—to bring the disability of slavery down to date, despite the decision of the Supreme Court of the United States in the case of *Guinn v. U. S.*, *supra*. Furthermore, if six thousand seven hundred Negroes of a county, its entire Negro population, have been wholly disfranchised for twenty years, what difference does it make under the 15th Amendment to the Constitution of the United States, whether one calls it a Grandfather Law or a Registration Law!

The inhibitions of the 15th Amendment are "leveled at the thing, not the name". *In re: Tiburcio Parrott* (C. C. D. Calif. 1880), 1 Fed. 481, p. 515, J. SAWYER.

This law of the State of Oklahoma, to-wit Sec. 5654, O. S. 1931, as well as the result its administration has achieved, as disclosed by the record herein, is condemned by a constitutional principle uniformly declared by the Supreme Court of the United States, and also by other courts, ever since the adoption of the 15th Amendment:

Slaughter-House Cases (1873), 83 U. S., 16 Wall. 36, 21 L. ed. 394, opinion by Mr. Justice MILLER;

U. S. v. Reese, et al. (1876), 92 U. S. 214, 23 L. ed 563, opinion by Mr. Chief Justice WAITE;

Neal v. Delaware (1881), 103 U. S. 370, 26 L. ed. 567, opinion by Mr. Justice HARLAN;

In re: Yarbrough (1884), 110 U. S. 651, 28 L. ed. 274, opinion by Mr. Justice MILLER;

Guinn v. U. S., supra (1915), 238 U. S. 347, 59 L. ed.^b 1340, opinion by Mr. Chief Justice WHITE;

Anderson, et al. v. Myers, et al., supra (C. C. D. Md. 1910), 182 Fed. 223, opinion by D. J. Morris;

Myers, et al. v. Anderson, et al., supra (1915), 238 U. S. 368, 59 L. ed. 1349, opinion by Mr. Chief Justice WHITE;

West v. Bliley, et al., supra (D. C. Va. 1929), 33 Fed. (2d) 177, opinion by D. J. Groener;

Bliley, et al. v. West, supra (C. C. A. 4th, 1930), 42 Fed. (2d) 101, opinion by C. J. NORTHCOTT;

Nixon v. Herndon, et al. (1927), 273 U. S. 536, 71 L. ed. 759, opinion by Mr. Justice HOLMES.

Point 2. This case is not within the doctrine of the case of *Giles v. Harris, et al.* (1903) 189 U. S. 475, 47 L. ed. 909.

In their answer (R., p. 16), and in the courts below, respondents urged the patently specious argument—that petitioner is inconsistent in insisting upon the right to register under the Oklahoma Registration Law, while, at the same time, he is contending that the said law is unconstitutional and invalid. Restated, the argument is that if said law is unconstitutional, as contended by petitioner, it has never had any legal existence and petitioner never had any legal right to be registered; and if petitioner did not have a legal right to be registered, he has no legal complaint against respondents on account of the denial by them of registration. There are many answers to this illogical and sophistical contention:

First, the respondents seek thereby to play hard and fast, to blow hot and cold at the same time. They refuse to take the position that said law is either constitutional or unconstitutional;

Secondly, in urging said defense the respondents wholly ignore the fact that under the 15th Amendment and R. S. 2004, as well as under Sec. 1 of Art. III of the State Constitution, and independently of the cunning provisions of the state law or their amphibolous construction thereof, petitioner had the right to vote; and,

Finally, and conclusively, this Supreme Court of the United States has wholly repudiated the identical proposition. *Myers, et al. v. Anderson, et al., supra* (1915); 238 U.S. 368, 59 L. ed. 1349.

Said case of *Myers v. Anderson, supra*, was decided by this court on the same day on which was rendered the opinion in the *Guinn* case, *supra*; and the opinion therein

is directly in point and controlling on the point here under discussion. Said the learned Chief Justice (238 U. S., at p. 382; 59 L. ed. at p. 1355):

“But it is argued even although this result be conceded, there nevertheless was no right to recover, and there must be a reversal since, if the whole statute fell, all the clauses providing for suffrage fell, and no right to suffrage remained, and hence no deprivation or abridgment of the right to vote resulted. But this, in a changed form of statement, advances propositions which we have held to be unsound in the *Guinn* case. The qualification of voters under the Constitution of Maryland existed and the statute which previously provided for the registration and election in Annapolis was unaffected by the void provisions of the statute which we are considering. The mere change in some respects of the administrative machinery by the new statute did not relieve the new officers of their duty, nor did it interpose a shield to prevent the operation upon them of the provisions of the Constitution of the United States and the statutes passed in pursuance thereof. The conclusive effect of this view will become apparent when it is considered that if the argument were accepted, it would follow that although the 15th Amendment by its self-operative force, without any action of the state, changed the clause in the Constitution of the State of Maryland conferring suffrage upon ‘every white male citizen’ so as to cause it to read ‘every male citizen’, nevertheless the Amendment was so supine, so devoid of effect, as to leave it open for the legislature to write back by statute the discriminating provision by a mere changed form of expression into the laws of the state, and for the state officers to make the result of such action successfully operative.

“There is a contention pressed concerning the application of the statute upon which the suits were based to the acts in question. But we think, in view of the nature and character of the acts, of the self-operative

force of the 15th Amendment, and of the legislation of Congress on the subject, that there is no ground for such contention."

Moreover, it is apparent that the above specious argument of respondents emanated from a misconception or attempted distortion of the opinion rendered by this court in the case of *Giles v. Harris* (1903), 189 U. S. 475, 47 L. ed. 909, wherein the great Justice HOLMES ruled that in a proceeding in equity, wherein petitioner prayed the court to declare the entire election law of the state to be unconstitutional, the court could not so declare the law unconstitutional, and at the same time enforce it by a mandatory decree. In the opinion in said cause Mr. Justice HOLMES said (189 U. S., at p. 485, 47 L. ed., at p. 911):

"On these assumptions we are not prepared to say that an action at law could not be maintained on the facts alleged in the bill. Therefore, we are not prepared to say that the decree should be affirmed on the ground that the subject-matter is wholly beyond the jurisdiction of the Circuit Court. *Smith v. McKay*, 161 U. S. 355, 358, 359, 40 L. ed. 731, 16 Sup. Ct. Rep. 490."

Point 3. *The fact that the Oklahoma Registration Law provided some purported judicial remedy in the state courts for wrongful denial of registration did not affect petitioner's right to damages under R. S., Sec. 1979, nor impair the jurisdiction of the Federal Court over this action for damages under said Federal Statute.*

The above-stated proposition is so well settled and so well known to the bench and bar that merely to state it would appear redundant had not the respondents so earnestly urged the contrary in the courts below, and had not the opinion of the Circuit Court of Appeals below (R., p. 101), so sparse of reason or authority, seemed to accept

said unfounded contention of respondents as sound. Said erroneous position of respondents seems to be based upon a dictum in the opinion rendered by the Fifth Circuit Court of Appeals in the case of *Trudeau v. Barnes* (1933), 65 Fed. (2d) 563, where it was stated:

"We cannot say, and refuse to assume, that, if plaintiff had pursued the administrative remedy that was open to him he would not have received any relief to which he was entitled. At any rate, before going into court to sue for damages, he was bound to exhaust the remedy afforded him by the Louisiana Constitution." Citing: *First National Bank of Greeley v. Board*, 264 U. S. 450, 68 L. ed. 784; *First National Bank v. Geldhart* (C. C. A. 5), 64 Fed. (2d) 873.

While said *Trudeau-Barnes* case, *supra*, bears a superficial similarity to the *Myers-Anderson* case, *supra*, as well as to the instant case, a casual analysis of said *Trudeau-Barnes* opinion will reveal that it is to each of said other cases as antipodal as the poles. The provisions in the Louisiana Constitution (concerning registration) involved in the *Trudeau-Barnes* case appeared similar to the law involved in the *Myers-Anderson* case, *supra*, in that each established a literacy test for suffrage; and it appeared similar to the instant case because there the plaintiff, a Negro, sought damages under R. S. Sec. 1979, just as petitioner seeks herein. There the similarity ended: it appears from the opinion in said case that there were not sufficient allegations of any discriminatory administration of the law in question in violation of the 15th Amendment, and, though given leave to amend to cure said defect, plaintiff declined so to amend his complaint. The constitutional provision involved in said *Trudeau-Barnes* case did not provide for any exemption to any class of electors (as was provided in the Grandfather Clauses of Oklahoma and

Maryland or as is involved in the Oklahoma Registration Law of 1916), nor was there any attempt at classifying the electors; and said opinion expressly, and pointedly distinguished said Louisiana law from such other laws, in the following words:

That said Louisiana law was "essentially different from the Grandfather Clause of the Oklahoma Constitution which was held void in *Guinn v. United States*, * * * and the Maryland statute which was under consideration in *Myers v. Anderson*, * * *."

Further, if the federal courts should accept the view that the provision by a state statute of a judicial review in the state court of a wrongful refusal of the exercise of the right of suffrage would divest the federal courts of jurisdiction of such a controversy, then the 15th Amendment, as well as R. S. Secs. 2004, and 1979, would be mere nullities. Indeed, it is very rare that any state statute designed to violate the 15th Amendment to the Constitution of the United States fails to provide some purported judicial remedy in the state courts in such case. Such a remedy was provided by the constitutional provisions under scrutiny in said *Trudeau-Barnes* case, but the federal court assumed jurisdiction, and proceeded to determine the validity of the state constitutional provisions in question. Likewise, in the case of *Giles v. Harris*, *supra*, by the provisions of the Alabama Constitution (189 U. S. at p. 484; 47 L. ed. at p. 911):

"An appeal is given to the county court and supreme court if registration is denied."

Yet, Mr. Justice HOLMES, speaking for the Supreme Court, refused to decide the case on the ground that the subject-matter was wholly beyond the jurisdiction of the federal court, and said case was disposed of on its merits. The registration law of the State of Maryland, involved in the

Myers-Anderson case, *supra*, specifically provided (Annotated Code of Maryland, Art. III, Sec. 27) that any person aggrieved by any board of register in refusing to register him as a qualified elector should have the right to an immediate state judicial hearing of the matter; yet, it was held that the federal court had jurisdiction, and this court proceeded to declare said registration law unconstitutional, although it did not appear that the plaintiff there had availed of said state remedy. And the registration statutes of the State of South Carolina, involved in the case of *Wiley v. Sinkler* (1900), 179 U. S. 58, 47 L. ed. 84, provided for a review in the state courts in such cases, and the federal courts assumed jurisdiction of an action for damages and proceeded to dispose of the case on its merits, although it did not appear that any resort had been had to such state remedy.

Moreover, the cases cited in said dictum in said *Trudeau-Barnes* case do not sustain the position of respondents here: *The First National Bank v. Board* case (cited in *Trudeau v. Barnes*, *supra*, page 48) merely held that a national banking corporation, in an effort to avoid taxation by the state of its shares of stock, not having applied to any of the tax authorities to reduce the assessment on its property or correct the alleged inequalities, prior to the final levy of the tax, and having paid said tax under protest, could not maintain an action in the federal court to recover such tax. And the *First National Bank v. Goldhart* case, cited in said *Trudeau-Barnes* opinion, merely held that a property owner who had already instituted, and was prosecuting, an appeal, under *administrative* proceedings provided by a state statute, could not, while prosecuting such *administrative* appeal, prosecute in a federal court of equity a suit to enjoin the collection of taxes involved. This latter ruling was obviously sound for

the reasons stated in said opinion: (1) the federal action was premature; and (2) plaintiff had an adequate remedy at law by paying the tax (after availing of the administrative remedy) under protest and seeking its recovery in an action at law.

True, this court denied Writ of Certiorari to review the opinion in said *Trudeau-Barnes* case, but such refusal does not in anywise amount to judicial approval by this court of the views expressed in said opinion. See: Revised Rules of Supreme Court of United States, Rule 38; *Hamilton Brown Shoe Co. v. Wolfe Bros. & Co.* (1916), 240 U. S. 251, 60 L. ed. 629.

And it may be observed that the remedy sought to be availed of by the petitioner here, namely, damages under R. S. Sec. 1979, is radically different from the purported remedy provided by said state statute, O. S. 1931, Sec. 5654. While said state statute purports to provide for a judicial inquiry as to the right of an elector to be registered, it does not in any wise provide for damages where the elector is wrongfully refused registration. The remedies provided, respectively, by the state statute, and by R. S. Sec. 1979, are radically different. Thus, where a plaintiff, who had in the state court unsuccessfully sought writ of mandamus to compel the registration officers to register him, subsequently instituted action under R. S. Sec. 1979 and in the federal court for damages, the federal court refused to give any effect to the judgment in the state court, on plea of *res judicata*, for the reason, as stated by C. J. NORTHCOTT in the opinion in *Bliley, et al. v. West* (C. C. A. 4, 1930), 42 Fed. (2d) 101, affirming *West v. Bliley, et al.* (D. C. Va. 1929), 33 Fed. (2d) 177:

"The precise issue here involved is different from that in the mandamus suit." Citing, *Myers v. International Co.* (1923), 263 U. S. 64, 68 L. ed. 165.

Even where an Arkansas statute specifically provided for a state remedy, and provided that such remedy in the state courts should be exclusive to the jurisdiction of the federal courts, this court held that a federal court in a proper case had jurisdiction, even though no effort had been made to avail of said state remedy. *Chicot County, Arkansas v. Sherwood, et al.* (1893), 148 U. S. 529, 37 L. ed. 546. See also: *Davis v. Wallace* (1922), 257 U. S. 478, 66 L. ed. 325.

Thus, it appears that the failure of petitioner Lane to seek relief in the Courts of Wagoner County, or in the Supreme Court of Oklahoma, is immaterial to a disposition of this cause by this court.

Point 4. Sec. 5654, O. S. 1931, is violative of the 15th Amendment to the Constitution of the United States and R. S., Sec. 2004, because it is here shown that its actual administration achieves a result interdicted by said Amendment and by said Congressional Act.

No one can deny that the purposes of said 15th Amendment was to secure to Negro citizens the right of suffrage, on equal terms with other citizens, and free from discrimination by the states. *West v. Bliley, et al., supra*, 33 Fed. (2d) 177, 178, and authorities there cited; and also the authorities cited under Point 1, next above. It is impossible to imagine a situation, achieved by the actual administration of a state law, more flagrantly violative of said Amendment than that depicted by the record in this case.

It is a well established principle of constitutional construction that in determining the constitutionality of a state statute the court will consider its effect in actual operation, as well as its terms.

—*Henderson v. Mayor of New York, etc., et al.* (1876), 92 U. S. 259, 23 L. ed. 543, opinion by Mr. Justice MILLER;

Yick Wo v. Hopkins (1886), 118 U. S. 356, 30 L. ed. 220, opinion by Mr. Justice MATTHEWS;

Minnesota v. Barber (1890), 136 U. S. 313, 34 L. ed. 455, opinion by Mr. Justice HARLAN;

Truax v. Raich (1915), 239 U. S. 33, 40, 60 L. ed. 131, 135, opinion by Mr. Justice HUGHES.

To the contrary, it seems, the respondents rely upon the dictum of District Judge M. J. Cochran in *Grainger v. Douglas Park, etc.* (C. C. A. 6th, 1906), 148 Fed. 513 (See: contention of counsel, R., p. 35). It would seem superfluous here to attempt by argument or citation of authority to prove that it takes more than a dictum by a District Judge to overrule the well established, and universally accepted doctrine of *Yick Wo v. Hopkins, supra*; however, see: *Mugler v. Kansas* (1887), 123 U. S. 623, 31 L. ed. 205; *Traux v. Corrigan* (1921), 257 U. S. 312, 324, 66 L. ed. 254, 259; and *Sioux City Bridge Company v. Dakota County, Nebraska* (1923), 260 U. S. 441, 67 L. ed. 340.

PROPOSITION III.

The said Registration Law of the State of Oklahoma, as made and enforced by the State, abridges the privileges and immunities of petitioner Lane and of other citizens of the United States of his color and similarly situated, and deny them the equal protection of the laws; said Registration Law is violative of the 14th Article of Amendment to the Constitution of the United States, and said issue was duly raised in said court; and said Honorable United States Circuit Court of Appeals for the Tenth Circuit erred in holding and adjudging said Registration Law to be valid and constitutional without in any manner passing upon said issue so made under the 14th Article of Amendment to the Constitution of the United States.

Though it was properly assigned in the Circuit Court of Appeals that said registration law of Oklahoma was violative of the 14th Amendment (R., pp. 1, 7, 53, 80), the opinion of said court fails in any manner even to mention said issue or said amendment.

There formerly prevailed in some quarters the erroneous view that the 14th Amendment did not in any way restrain the authority of the state in regulating suffrage. See opinion in *Cofield v. Farrell, et al.* (1913), 38 Okl. 608, at p. 613, 134 Pac. 407. At the present time, however, there is no doubt as to the applicability of said amendment to such state laws. The opinion of Mr. Justice HOLMES, in *Nixon v. Herndon, et al.* (1927), 273 U. S. 536, 71 L. ed. 759, adjudging a former Texas primary law which denied suffrage to Negroes, to be unconstitutional, was based exclusively upon the 14th Amendment.

That the State law in question and its administration, as disclosed by the record and already discussed in this brief, are flagrantly violative of said amendment, seems too

obvious to require further comment. When it is sought to apply the constitutional standard of said amendment to the law in question, and to the result it has produced in Wagoner County, the question is not whether the State of Oklahoma has afforded Lane and the other Negroes the equal protection of the laws: the serious inquiry suggested is, whether the state has afforded them *any protection* at all! The record herein discloses that under said Sec. 5654, O. S. 1931, the State of Oklahoma is, so far as the questions here involved are concerned, still applying and enforcing the law of 1857, in total disregard of the 14th Amendment; that it is giving full, positive effect to the *Dred Scott* dictum, following *Atwater v. Hassett*, *supra*, p. 33; and openly defying the opinion of Mr. Chief Justice WHITE in the *Guinn* case, *supra*.

This law, by its very terms, places every burden upon petitioner Lane, and others situated as he was; while as to the electors (all whites) who voted in 1914 no requirement is made. Lane is given only one ten-day period within which to qualify under the Registration Law; he must answer under oath "any question touching his qualifications as an elector". If Lane should vote without having registered according to said Registration Law, he would, under Sec. 5842, Vol. I, O. S. 1931, p. 1714, be guilty of a felony; and under Sec. 5844, Vol. I, O. S. 1931, p. 1714, would be disfranchised for ten years. While the white electors, who voted in the unlawful election of 1914, would, under similar circumstances, be guilty of no offense at all.

Under these circumstances, the refusal of registration is a denial of the right of suffrage. *Myers v. Anderson*, *supra*, p. 44; and petitioner Lane was not required to attempt to vote without being registered (and risk being convicted of a felony) in order to secure adjudication of his rights. *Terrace v. Thompson* (1923), 263 U. S. 197, 216,

68 L. ed. 255, 275. Moreover, Sec. 6 of Art. III, of Oklahoma Constitution (authorizing registration legislation: Vol. II, O. S. 1931, p. 1408, Sec. 13452, *supra*, p. 42) prohibits voting by one who is not registered; and the vote of an unregistered elector is void. *Munger, et al. v. Town of Watonga, et al.* (1925), 106 Okl. 78, 233 Pac. 212; see also, Sec. 5652, O. S. 1931 (Appendix hereto, p. 73).

Furthermore, as has been hereinbefore shown, said law requires petitioner Lane to register, while, in the manner in which the law is administered, it has been impossible for him, or any other Negro (excepting 2 in more than 20 years years, R., p. 36) to register. During all these years it appears that the white electors (qualified after 1916) were permitted freely to register, regardless of the technical provisions of Section 5654 (R., p. 74; See also, testimony of respondent Marion Parks, registrar, R., p. 49, *et seq.*).

Said Sec. 5654 imposes, in effect, upon petitioner Lane an arbitrary period of limitation of ten days within which to seek to remedy the wrongful refusal of registration. Those who voted in the illegal election of 1914, even though their votes were cast in violation of said illegal law, have preserved to them, conclusively, the right of suffrage, without any qualification or requirement whatever.

As hereinbefore shown, under Sec. 5654, petitioner was purportedly allowed a limitation period of only ten days within which to seek to remedy any wrongful denial of registration; the registration officer so offending was entitled to formal summons, and was allowed ten days within which to answer; and said registration official had the right of appeal from any possible order or decree in favor of petitioner. On the contrary, by Sec. 5661, Vol. I, O. S. 1931, p. 1651 (Appendix, p. 75), the county registrar is given an absolute, ar-

bitrary and capricious power, upon 48 hours informal notice, to strike the name of *any* elector from the register. The statute, in effect, expressly authorizes the county registrar to consider hearsay evidence. And there is no power, judicial or administrative, on this side of Judgment Day, to review or question such acts of said registrar.

The actual working of this unequal, unjust, oppressive law is not left to speculation or imagination: here we have it in actual operation. Consider the actual case conducted by the respondent, Jess Wilson, and instigated by the respondent Judge Moss, within two days after the institution of the instant action (R.; p. 64-74). Here was John Moss, candidate for re-election, in actual control of the entire registration system in the county! He was acting as the legal adviser to the election officials (R., pp. 49, 48, 47); instructing them as to how to perform the duties of their respective offices (R., pp. 49, 46); and in this particular case instructing the county registrar as to whose names to strike from the register (R., p. 46). See record, page 72, where counsel was attempting to appear before the County Registrar on behalf of Negroes whose names were to be stricken from the register:

"Mr. John Moss: Is that all you (counsel for Negro electors) appear for, for that reason?"

Mr. Chandler: Yes.

Mr. John Moss: Then you (the county registrar) might excuse all of us and hear it."

And the county registrar, being under the complete domination of Judge Moss, did as he was ordered. By the same token, any corrupt candidate for public office could (or can), under this registration law, enter cahoots with the county registrar, and disfranchise, not only the Negro electors, but also all other electors who he knew would vote against him.

—by the very terms of this law, he could disfranchise the opposing candidate, or even the district judges themselves, and there would be no definite, known proceeding under this law by which anyone could complain. Of course, this is not due process of law: it is not equal protection of the laws. It is, on the other hand, corrupt politics, injustice, oppression, tyranny!

This state law, and the result it has produced, are clearly violative of said 14th Amendment:

Slaughter-House Cases (1873), 83 U. S., 16 Wall. 36, 21 L. ed. 394, opinion by Mr. Justice MILLER;

Strauder v. W. Va. (1880), 100 U. S. 303, 25 L. ed. 664, opinion by Mr. Justice STRONG;

Ex parte Va. (1880), 100 U. S. 339, 25 L. ed. 676, opinion by Mr. Justice STRONG;

In re: Tiburcio Parrott (C. C. D. Calif. 1880), 1 Fed. 481, opinion by J. SAWYER;

Neal v. Delaware (1881), 103 U. S. 370, 26 L. ed. 567, opinion by Mr. Justice HARLAN;

Yick Wo v. Hopkins (1886), 118 U. S. 356, 30 L. ed. 220, opinion by Mr. Justice MATTHEWS;

In re: Wo Lee (C. C. D. Calif. 1886), 26 Fed. 471, opinion by J. SAWYER;

Minnesota v. Barber (1890), 136 U. S. 313, 34 L. ed. 455, opinion by Mr. Justice HARLAN;

Buchanan v. Warley (1917), 245 U. S. 60, 62 L. ed. 149, opinion by Mr. Justice DAY;

Nixon v. Herndon (1927), 273 U. S. 536, 71 L. ed. 759, opinion by Mr. Justice HOLMES.

From a legal and constitutional point of view, the abovementioned *Yick Wo v. Hopkins* case is squarely in point, and the opinion of Mr. Justice MATTHEWS there, is controlling here.

PROPOSITION IV.

It appearing that petitioner Lane was duly qualified as an elector under Section 1 of Article III of Oklahoma Constitution (Vol. II, O. S. 1931, p. 1406, Sec. 13446; Appendix hereto, p. 76), but that pursuant to said Oklahoma Registration Law of 1916, as enforced by respondents, said petitioner was forbidden to register as an elector, though so duly qualified, and for said reason said Registration Law violated said provision of said state constitution; and alleged error to said effect was duly assigned in the Circuit Court of Appeals; and said Circuit Court of Appeals erred in holding said Registration Law to be valid and constitutional, without in any manner observing said issue so made under the state Constitution.

The above stated proposition raises, admittedly, a question of state law; but since this question arises in this cause, cognizable by the federal court, it is competent for the federal court to pass upon all questions involved, including state questions, where such questions have not been specifically passed upon by the Supreme Court of the State. *Gunn v. United States*, *supra* (1915), 238 U. S. 347, 59 L. ed. 1340; *Davis v. Wallace*, *supra* (1922), 257 U. S. 478, 66 L. ed. 325. Petitioner has been unable to ascertain that this particular question has ever been passed upon by the Supreme Court of the State of Oklahoma.

This proposition is based upon the contention of petitioner that the qualifications of an elector in the State of Oklahoma are those prescribed by Sec. 1, Article III, of the Oklahoma Constitution (quoted in the 2nd requested instruction below, R., p. 52; and quoted in Appendix to this brief at page 76); that said Sec. 5654, under the guise of regulating the registration of electors, is an unwarranted and unconstitutional (under state constitution) attempt by the

State Legislature to modify said constitutional requirements, and an actual destruction of the rights of an elector duly qualified under the terms of said constitutional provision.

This contention of petitioner seems sound, both in substance and upon legal principle. In this very case, although it is admitted (See Answer of respondent, R., p. 15) that petitioner possesses all of the constitutional qualifications of an elector, yet, on account of the terms and enforcement of said Sec. 5654, said petitioner is denied any of the rights, privileges, or immunities of a constitutionally qualified elector, and is denied any means of redress for the denial of the exercise of the privilege, or for violation of the right. Thus, as to petitioner, the constitutional definition of the qualifications of an elector is a mere nullity. Though duly qualified as an elector in 1934, he was denied registration under Sec. 5654. Such law cannot be defended as regulatory: for, in fact, it is more—it is confiscatory and destructive.

And on the other hand, as to the exemption from registration accorded by the said Sec. 5654 to those who voted in 1914, said statute is equally violative of said Sec. 1, of Article III, of the State Constitution. Such voters (who voted in 1914) have an absolute and incontestable right to vote in any election in the state. The last sentence of said Sec. 5654 is: "Provided further, that each county election board in this state shall furnish to each precinct election board in the respective counties a list of the voters who voted at the election in November, 1914, and such list *shall be conclusive evidence of the right of such person to vote.*" (Italics ours.) Thus, any person whose name may be found upon such list has an absolute, incontestable right today to vote (under Sec. 5654), though he actually possesses none of the qualifications prescribed by said Sec. 1, Article III

of the Constitution, and though he be tainted by each of the attributes of persons by the Constitution expressly forbidden to vote.

Petitioner knows of no presumption of fairness or regularity of operation which the court is bound to indulge in favor of an unconstitutional, void law. Very probably, persons who were not citizens, and also felons, convicts, paupers, idiots and lunatics actually voted in fulsome hordes in 1914, under the Grandfather Clause—under the terms of the Grandfather Law, every felon, pauper, and idiot in the state could vote who could prove that he was on "January 1, 1866 * * * entitled to vote", etc. No one can imagine all the wrongs and unlawful acts perpetrated under cover of that constitutional monstrosity known as the Grandfather Clause. Imagination is not necessary—just read the sordid narration in the opinion rendered in *Guinn v. United States* (C. C. A. 8, 1915), 228 Fed. 103, for a description of operation of the "state policy" sought to be perpetuated by the respondents. Yet by the effect of Sec. 5654, every alien, felon, idiot or lunatic who voted in 1914 under the Grandfather Law, whether in consonance with its spirit or contrary to its terms, is today duly qualified to vote, despite the requirements of said Sec. 1 of Article III, of the State Constitution.

And this practical quære suggests itself: what was the need or reason for the special, necromantic 1916 registration in Wagoner County, if all those (obviously white) who voted in 1914 were exempted from registration; and all those who did not vote in 1914 (obviously, black) were denied registration?

The rule of law governing such a state statute is well settled. In Vol. 9, *Ruling Case Law*, commencing at page 1036, concerning Elections, it is stated:

"Sec. 52. *In General.* It is a general rule that, in the absence of constitutional inhibition the legislature may adopt registration laws if they merely regulate in a reasonable and uniform manner how the privilege of voting shall be exercised. It is true that the constitution by prescribing the qualifications of those who may vote confers upon persons coming within the class so created a right to vote which cannot be abridged by the legislature, and, therefore, the theory upon which registration laws may be supported is that they do not impair or abridge the electors' privilege but merely regulate its exercise by requiring evidence of the right. The fact that a constitutionally qualified voter may be prevented from voting through failure to comply with the law does not necessarily invalidate it, provided he be afforded a reasonable opportunity to register before the election. The requirement of registration does not add a new qualification, unless such voter is deprived of the right to prove himself to be an elector, or, as it has been held, is denied the right to register at any time prior to the closing of the polls on election day." (Citing):

State v. Corner, 22 Neb. 265, 34 N. W. 499, 3 A. S. R. 267;

White v. Multnomah County, 13 Ore. 317, 10 Pac. 484, 54 Am. Rep. 843;

Dells v. Kennedy, 49 Wis. 555, 6 N. W. 246, 381, 35 Am. Rep. 786;

Notes: 7 L. R. A. 99; Ann. Cas. 1913B 25.

"Sec. 53. *Essentials of a valid Registration Law.* A registration law will not be held valid which under the color of regulating the manner of voting, really subverts the right, for a law of this description must be reasonable, uniform and impartial, and must be calculated to facilitate and secure, rather than impede, the exercise of the right. If, for instance, it prescribes a qualification for the elector in addition to those pro-

vided by the constitution, or prescribes regulations so unreasonable and restrictive as to exclude a large number of legal voters from exercising their franchise, it will be declared invalid." Citing: *Brewer v. McClelland*, 144 Ind. 423; 32 N. E. 299, 17 L. R. A. 845; *Edmonds v. Banbury*, 28 Ia. 267, 4 Am. Rep. 177; *Owensboro v. Hickman*, 90 Ky. 629, 14 S. W. 688, 10 L. R. A. 224; *Capen v. Foster*, 12 Pick. (Mass.) 845, 23 Am. Dec. 632 and note (cited by Mr. Justice MATTHEWS in *Yick Wo-Hopkins*, *supra*); *Atty. General v. Detroit*, 78 Mich. 545, 44 N. W. 388, 18 A. S. R. 458, 7 L. R. A. 99; *State v. Corner*, 22 Neb. 265, 34 N. W. 499, 3 A. S. R. 267; *State v. Board, etc.*, 21 Nev. 67, 24 Pac. 614, 9 L. R. A. 385; *Daggett v. Hudson*, 43 Ohio 548, 3 N. E. 538, 54 Am. Rep. 832 (cited by Mr. Justice MATTHEWS in opinion in *Yick Wo-Hopkins*, *supra*); *Page v. Allen*, 58 Pa. St. 338, 98 Am. Dec. 272; Notes: 28 A. S. R. 260, Ann. Cas. 1913B, 19, *et seq.*

"Sec. 54. *Registration Laws Under Constitutional Provisions.* * * * Where the constitution directs that the legislature shall provide for the registration of all persons entitled to vote, *the mandate is an implied prohibition against providing for the registration of any class or for only a part of the voters.* The qualifications of voters must be uniform. One voter must possess the same as another and he need possess no more. And even without such provision it seems clear that a registration law in order to be valid must be uniform in its operation. Hence, a law which requires one person to be registered in order to be entitled to vote, while it permits another person to vote without being registered, is void." (*Morris v. Powell*, 125 Ind. 281, 25 N. E. 221, 92 L. R. A. 326.)

"The fact that the legislature is expressly authorized to enact registration laws does not affect the rule heretofore laid down that such a law shall not

under pretense of regulation preclude or hinder any one from the exercise of his right of franchise." Citing: *Pope v. Williams*, 98 Md. 59, 56 Atl. 543, 103 A. S. R. 379; 66 L. R. A. 398; *People v. Canady*, 73 N. C. 198, 21 Am. Rep. 465."

The third syllabus of the above cited case of *Atty. Gen. v. City of Detroit* (1889), 78 Mich. 545, 44 N. W. 388, is as follows:

"The act is unreasonable and void because it provides for but five registration days during the year, at one of which the elector must make personal application for registration; thus disfranchising persons who are ill or absent on registration days, but who would be able to vote on election days."

In said Michigan case the registration law was declared to be void because it provided for only five registration days during the entire year. *A fortiori*, this Oklahoma statute, which provides for only one ten-day registration period during the entire lifetime of the elector (and that, in 1916), is unreasonable and void.

The third syllabus of the case of *McCafferty v. Guyer, et al.* (1868), 59 Pa. St. 109, is in the following words:

"The 3rd Article of the Constitution is not merely a general provision defining the indispensable requisites to the rights of an elector, leaving the legislature to determine who may be excluded. It is a description of who shall not be excluded.

"The Act of June 4th, 1866 [for disfranchising deserters] is unconstitutional."

And in the case of *Monroe, et al. v. Collins* (1866), 17 Ohio St. 665, opinion by Justice WELCH, the law is stated in the second syllabus, thus:

"The legislature have no power, directly or indirectly, to deny or abridge the constitutional right of

citizens to vote, or unnecessarily to impede its exercise; and laws passed professedly to regulate its exercise or prevent its abuse must be reasonable, uniform, and impartial."

This last cited case, to-wit, *Monroe v. Collins*, quoted from above, is especially significant here because in said case the Legislature of the State of Ohio, even before the adoption of the 14th and 15th Amendments to the Constitution of the United States, attempted, by a registration law, to deny to Negroes the right of suffrage; and said case is entitled to very serious consideration because it was cited, with pointed approval, by Mr. Justice MATTHEWS, speaking for the Supreme Court of the United States, in the case of *Yick Wo v. Hopkins* (1886), 118 U. S. 356, 30 L. ed. 220.

Concerning the specific question as to the constitutionality of such a registration law as is here under judicial scrutiny, the law is stated by Cooley's Constitutional Limitations, 8th Edition, 1927, Vol. 2, at p. 1370:

"All regulations of the elective franchise, however, must be reasonable, uniform, and impartial; they must not have for their purpose directly or indirectly to deny or abridge the constitutional right of citizens to vote, or unnecessarily to impede its exercise; if they do, they must be declared void." Citing: *Capen v. Foster*, 12 Pick. 485, 23 Am. Dec. 632; *Monroe v. Collins*, 17 Oh. St. 665; *Kineen v. Wells* (Sup. Jud. Ct. of Mass. 1887), 144 Mass. 497, 11 N. E. 916, and other cases.

In the above cited case of *Kineen v. Wells, et al.*, relied upon by Mr. Cooley, there was held to be unconstitutional and void a registration statute of the State of Massachusetts which provided that "no person hereafter naturalized in any court shall be entitled to be registered as a voter within thirty days of such naturalization." In said case,

an order of the trial court sustaining demurrer to a petition for damages against registration officers for enforcing said statutes as against a newly naturalized citizen, was reversed for the reason, as stated by Justice DEVENS, such registration law was in conflict with the right of an elector, duly qualified under the Constitution of the State of Massachusetts.

The above stated proposition was properly assigned, specified, and presented to the Circuit Court of Appeals below, but the opinion of said court wholly ignored same.

PROPOSITION V.

Upon the trial there was adduced abundant evidence of a conspiracy between and among the respondents, acting pursuant to said state laws, in the deprivation from petitioner of his rights under the Constitution and laws of the United States; and said Circuit Court of Appeals committed error in holding and adjudging that there was no conspiracy, said question being properly determinable by a jury, and not by the court; and in so doing the Circuit Court of Appeals violated the 7th Amendment.

In the trial court, this case was tried to a jury, where a verdict was instructed in favor of respondents (R., p. 61). There was abundant evidence to prove, nor was it controverted, that petitioner Lane possessed all the qualifications of an elector as prescribed by Sec. 1, Art. III, of the Oklahoma Constitution. It is not controverted that petitioner made application for registration, at the proper time, and that he was refused registration. There was, further, evidence to the effect that said refusal was on account of his race and color (R., p. 29). It is admitted that, in denying petitioner registration, respondents were enforcing, and acting under color of the state statutes the constitutionality of which is at issue.

It was charged in the petition filed in the trial court that in refusing registration to petitioner and to other Negroes the respondents were acting pursuant to a conspiracy (R., p. 5). During trial there was introduced evidence to prove: that during the registration period of 1916, the special registration provided the registration law, there were registered in Wagoner County 11 Negro electors; that during the next ten years not a single Negro elector was registered in said county; that in each of 1926 and 1928 there was registered 1 Negro; that from 1928 down to 1934 there was not a single Negro registered in said county (R., p. 36). It further appeared, and was not controverted, that approximately 30 percent of the population of the county were Negroes (R., p. 38). It was further proved that petitioner Lane had voted in Alabama, and in Oklahoma in 1910 and 1912, but that he could not vote in 1914 on account of the Grandfather Clause, and that he had never been able to register, although he had tried to register during every registration period since 1914 (R., p. 27-28).

While, in this controversy, the identity of the precinct registrar in 1916 appeared immaterial, the opinion of the Circuit Court of Appeals recited that it seemed to be "*conclusively established* by proof that one Workman was not precinct registrar in 1916" (R., p. 100). There was conflicting evidence as to the identity of the precinct registrar in 1916, and the question before the trial court, as well as the Circuit Court of Appeals, was not whether said Workman was the precinct registrar, but whether there was evidence to submit to the jury as to who was such registrar.

In the manner in which registrations are conducted in said county, it seems quite difficult, if not impossible, to determine just who is the registrar—from the evidence it appeared quite clearly that the precinct registrars made a general game of "hide-and-go-seek" with Negro electors

seeking registration; and this appears, not only from evidence of petitioner, but also from evidence of respondents. Their witness Atterberry testified that he was registrar for part of a registration period, and that the registration books were sent to him, but that he refused to serve (R., p. 43).

The respondent, Jess Wilson, county registrar, testified that he had appointed one Carl Lawrence, who had resigned; and that during part of the registration period of 1934 there was no precinct registrar (R., p. 45). Wilson advised petitioner Lane that the precinct registrar would be one Benny Harman, but said Wilson, county registrar, actually appointed respondent Parks as precinct registrar (R., p. 45).

Respondent Wilson testified that he appointed one Goddard as precinct registrar, said appointment being "just by oral agreement" (R., p. 46). There was not introduced in evidence any authentic record to identify any precinct registrar at any time—it seems that no such record existed. Under these circumstances, the mere fact that James L. Pace issued some registration certificates during 1916 is by no means conclusive—as the Circuit Court of Appeals held—that Workman, to whom petitioner applied, as he testified, was not precinct registrar during any part of said period. At best, it was a question of fact for the jury.

The opinion of the Circuit Court of Appeals to effect that there was no proof of a conspiracy seems to be patently erroneous: there was evidence that respondent Parks stated to petitioner that Judge Moss and Jess Wilson had instructed him not to register colored people (R., p. 33); respondent Wilson testified that he advised Parks that respondent Moss would instruct him regarding the election

laws (R., p. 46); respondent John Moss admitted instructing Parks about the registration law; and reading to Parks, as a statement of the law, a certain letter he had received which construed the law as contended by respondents (R., p. 48). After the precinct registrar Goddard had registered 50 Negroes, respondent Judge John Moss was one of the petitioners to have the names of said Negro electors stricken from the record (R., p. 64-65); and when said matter came on for hearing before the county registrar, respondent Wilson, sitting as a supreme judge and from whose edict there was no appeal, it was clear that Wilson was acting under instructions from Judge John Moss; and at the suggestion of Moss, Wilson excluded from the hearing counsel attempting to represent said Negro electors whose names were to be stricken (R., p. 72). At that very time Moss was a candidate for public office! There was abundant evidence of a conspiracy—surely enough to be submitted to a jury.

The opinion of the Circuit Court of Appeals recited, "There was proof that but few Negroes were registered in proportion to their population, but no proof of the number of qualified electors who applied and were refused" (R., p. 100). There was abundant proof that all who applied were refused; and there was further proof that all 50 names of those who were registered in 1934 were stricken from the register, and in an inquisitorial proceeding which was a disgrace to the state. Furthermore, it was sufficient for petitioner to prove that *he* was duly qualified and illegally denied the right to register. *State of Missouri, ex rel. Gaines v. Canada, etc., et al.* (Dec. 12, 1938, No. 57); . . . U. S. . . . L. ed. . . .

In disposing of said cause, the Circuit Court of Appeals undertook to determine the ultimate facts from conflicting evidence, and in so doing said court violated the 7th Amendment to the Constitution of the United States.

which guarantees the right to trial by jury; and the opinion and judgment of said Circuit Court of Appeals, usurping the function of jury, was erroneous.

—*Slocum v. N. Y. Life Insurance Co.* (1912), 228 U. S. 364, 57 L. ed. 879, at p. 887.

CONCLUSION.

Finally, it appears that in this cause the United States Circuit Court of Appeals for the Tenth Circuit has failed to observe Article VI of the Federal Constitution; it has usurped the function of jury and violated the Seventh Amendment; refused to consider the 14th Amendment; approved the flagrant violation of the 15th Amendment; and has ignored the applicable, controlling decisions of this Honorable Court. Further, that its judgment is erroneous, unjust and contrary to law.

Wherefore, petitioner respectfully, prays that the said judgment of said Circuit Court of Appeals herein be reversed; and that this Honorable Court cause justice to be done between the parties according to law.

Respectfully submitted this 20th day of January, A. D. 1939.

I. W. LANE,

Petitioner,

By CHARLES A. CHANDLER,

His Counsel.

APPENDIX.

ARTICLE VI, UNITED STATES CONSTITUTION (Vol. II, O. S. 1931, p. 1608):

"Article VI.

• • • • •

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

• • • • •

7TH AMENDMENT, UNITED STATES CONSTITUTION (Vol. II, O. S. 1931, p. 1611):

"In suits at Common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

FOURTEENTH AMENDMENT TO CONSTITUTION OF UNITED STATES (Vol. II, O. S. 1931, p. 1613):

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

• • • • •

"Section 5. The Congress shall have power to enforce by appropriate legislation, the provisions of this article."

**FIFTEENTH AMENDMENT TO CONSTITUTION OF
UNITED STATES (Vol. II, U. S. 1931, p. 1614):**

"Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

"Section 2. The Congress shall have power to enforce this Article by appropriate legislation."

**UNITED STATES CODE, TITLE 8—CHAPTER 2—
ELECTIVE FRANCHISE.**

"Section 31. *Race, Color, or Previous Condition Not to Affect Right to Vote.*—All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding." (R. S., Sec. 2004).

**UNITED STATES CODE, TITLE 8—CHAPTER 3—
CIVIL RIGHTS.**

"Section 43. *Civil Action for Deprivation of Rights.* Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." (R. S., Sec. 1979).

Title 28, U. S. C., Sec. 41 (Mason Code, Vol. 2, p. 1972):

"Section 41. Judicial Code, Section 24, Amended.) *Original Jurisdiction.*—The district courts shall have original jurisdiction as follows:

"(1) United States as plaintiff; civil suits at common law or in equity.—First. Of all suits of a civil nature, at common law or in equity, * * * or, where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of \$3,000, and (a) arises under the Constitution or laws of the United States, * * *. The foregoing provision as to the sum or value of the matter in controversy shall not be construed to apply to any of the cases mentioned in the succeeding paragraphs of this section. (R. S. Secs. 563, 629; Mar. 3, 1875, c. 137, Sec. 1, 18 Stat. 470; Mar. 3, 1887, c. 373, Sec. 1, 24 Stat. 552; Aug. 13, 1888, c. 866, Sec. 1, 25 Stat. 433; Mar. 3, 1911, c. 231, Sec. 24, 36 Stat. 1091.)"

Title 28, U. S. C., Sec. 41, Subdivision (14) (Vol. 2, Mason, p. 1991, defining jurisdiction of District Courts):

* * * * *

"(14) Suits to redress deprivation of civil rights.—Fourteenth. Of all suits at law or in equity authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom, or usage, of any State, of any right, privilege, or immunity, secured by the Constitution of the United States, or of any right secured by any law of the United States providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States. (R. S., Sec. 563, par. 12, Sec. 629, par. 16; Mar. 3, 1911, c. 231, Sec. 24, par. 14, 36 Stat. 1092.)"

(Vol. I, O. S. 1931, p. 1646, Sec. 5652) *Registration Mandatory.*

"It shall be the duty of every qualified elector in this state to register as an elector under the provisions of this Act, and no elector shall be permitted to vote at any election unless he shall register as herein provided, and no elector shall be permitted to vote in any primary election of any political party except of the political party of which his registration certificate shows him to be a member."

(Vol. I, O. S. 1931, p. 1646, Sec. 5654) *Time for Registration—Absentees—Appeals.*

"It shall be the duty of the precinct registrar to register each qualified elector of his election precinct who makes application between the thirtieth day of April, 1916, and the eleventh day of May, 1916, and such person applying shall at the time he applies to register be a qualified elector in such precinct and he shall comply with the provisions of this act, and it shall be the duty of every qualified elector to register within such time; provided, if any elector should be absent from the county of his residence during such period of time, or is prevented by sickness or unavoidable misfortune from registering with the precinct registrar within such time, he may register with such precinct registrar at any time after the tenth day of May, 1916, up to and including the thirtieth day of June, 1916, but the precinct registrar shall register no person under this provision unless he be satisfied that such person was absent from the county or was prevented from registering by sickness or unavoidable misfortune, as hereinbefore provided. And provided that it shall be the mandatory duty of every precinct registrar to issue registration certificates to every qualified elector who voted at the general election held in this state on the first Tuesday after the first Monday in November, 1914, without the application of said elector for registration, and, to deliver such certificate to such elector if he is still a qualified elector in such precinct and the failure to so register such elector who voted in such election held in November, 1914, shall not preclude or prevent such elector from voting in any election in this state; and provided further, that wherever any elector is refused registration by any registration officer such action may be reviewed by the district court of the county by the aggrieved elector by his filing within ten days a petition with the Clerk of said court, whereupon summons shall be issued to said registrar requiring him to answer within ten days, and the district court shall be a expeditious hearing and from his judgment an appeal will lie at the instance of either party to the Supreme Court of the State as in civil cases; and provided further, that the provisions of this act shall not apply to any school district elections. Provided further, that each county election board in this state shall furnish to each precinct election board in the respective counties a list of the voters who voted at the election in November,

1914, and such list shall be conclusive evidence of the right of such person to vote."

(Vol. I, O. S. 1931, p. 1651, Sec. 5661) *Illegal Registration—Cancellation—Procedure:*

"If two or more electors of any county have reason to believe that a name appearing upon the county registration book is illegally registered, they may apply in writing to the county registrar of such county to have such name stricken from the county registration book. Such applications shall not be made later than the Tuesday preceding any election, and shall be accompanied by an affidavit signed by one or more of such electors, setting forth their reason for believing that such name is illegally registered. Said county registrar shall forthwith consider said application and, if he shall determine from said affidavit or other evidence that there is reasonable ground for believing that such name is illegally registered, he shall forthwith cause notice of such application to be served upon the person, the registration of whose name is attacked, which service shall be made by serving a copy of the notice on said person, or if he be not found, then by leaving a copy thereof at the place which appears from the registration book to be his residence. Said notice shall briefly state the substance of the said application and shall order such person to appear before the county registrar in the court house of said county at an hour to be named therein which shall be at least 48 hours after the service of such notice. Return of the service of said notice by the sheriff shall be made within 48 hours. At the hour named for the appearance of such person the said county registrar shall proceed to investigate whether or not such name is illegally registered. Witnesses may be summoned in the usual way to testify in regard thereto, and may be sworn by said county registrar. If the county registrar shall find that said name is illegally or falsely registered he shall order such name to be stricken from the county registration book and so certify to the county clerk, and it shall be the duty of the county clerk upon the receipt of said certificate to strike said name from the county registration book and certify to the precinct registrar of the precinct in which such name was re-

istered that such name has been stricken from the county registration book by him pursuant to the order of the county registrar, and shall direct said precinct registrar to strike said name from the precinct registration book in his possession and upon receipt of said certificate from the county clerk it shall be the duty of the precinct registrar to strike said name from the precinct registration book in his possession. If the person whose name is sought to be stricken from the county registration book is not personally served with a copy of the notice hereinbefore provided, or has not entered his appearance before the county registrar, he shall have the right to apply to said county registrar at any time before six o'clock P. M. on the third day before the holding of any election to have said finding and certificate of the county registrar set aside, and if upon the hearing of said application the said county registrar shall not be of the opinion that his name was illegally registered he shall set aside said finding and certificate and shall certify to the county clerk that his findings has been set aside and direct the county clerk to reinstate his name on the county registration book, and the county clerk shall immediately upon receipt of such certificate so reinstate his name on the county registration book, and the county clerk shall immediately certify the same to the precinct registrar of the precinct in which said person was registered and direct said registrar to reinstate his name on the precinct registration book, and the precinct registrar shall immediately so reinstate his name on the precinct registration book."

OKLAHOMA CONSTITUTION, ARTICLE III, SUPPLEMENTAL FRAGMENT (Vol. II, O. S. 1931, p. 1406, Sec. 13446):

"*Electors—Qualifications—Felons—Paupers.* Section 1. The qualified electors of this State shall be citizens of the United States; citizens of the State, including persons of Indian descent (native of the United States), who are over the age of twenty-one years, and who have resided in the State one year, in the County six months, and in the election precinct thirty days, next preceding the election at which such elector offers to vote. Provided, that no person adjudged guilty of a felony, subject to such exceptions

as the Legislature may prescribe, nor any person, kept in a poorhouse at public expense, except Federal, Confederate and Spanish-American ex-soldiers or sailors, nor any person in a public prison, nor any idiot or lunatic, shall be entitled to register and vote."

OKLAHOMA CONSTITUTION, ARTICLE III, PRIMARY ELECTIONS (Vol. II, O. S. 1931, p. 1407, Sec. 13450) *Grandfather Clause*.

"Section 4a. No person shall be registered as an elector of this State, or be allowed to vote in any election held herein, unless he be able to read and write any section of the Constitution of the State of Oklahoma; but no person who was, on January 1st, 1866, or at any time prior thereto, entitled to vote under any form of government, or who at that time resided in some foreign nation, and no lineal descendent of such person, shall be denied the right to register and vote because of his inability to so read and write sections of such Constitution.

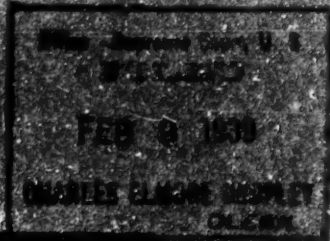
Precinct election inspectors having in charge the registration of electors shall enforce the provisions of this section at the time of registration, provided registration be required. Should registration be dispensed with, the provisions of this section shall be enforced by the precinct election officers when electors apply for ballots to vote."

(Amendment, initiated by the people and adopted at an election held August 2, 1910. The Governor's Proclamation announcing the result, was issued October 6, 1910.)

OKLAHOMA CONSTITUTION, FEDERAL RELATIONS, ARTICLE I (Vol. II, O. S. 1931, p. 1386; Sec. 13411) *Suffrage*:

"Sec. 6. The State shall never enact any law restricting or abridging the right of suffrage on account of race, color, or previous condition of servitude."

FILE COPY



In the Supreme Court
of the United States
No. 460, October Term, 1938

L. W. LANE, Petitioner,

VERSUS

JESS WILSON, JOHN MOSS AND MARION PARKS,
Respondents.

BRIEF OF RESPONDENTS.

(ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE TENTH CIRCUIT.)

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I.

Plaintiff cannot in the same action both assert that the Oklahoma Registration Statutes are void, and rely upon them. If the statutes are void, as he contends, registration would have been a vain thing. Accepting the allegations of the petition for the purposes of this case only, and this Court should so accept them without passing upon the validity of the challenged statutes, it must be held that plaintiff has not been damaged and cannot recover, for if these allegations are taken as true, for the purposes of the case, he had the right to vote without registration. The plaintiff thus has foreclosed himself from invoking the several questions of law and of fact which he seeks to present. For these and other reasons hereinafter shown, plaintiff has not stated a cause of action. He presents no federal question for decision.	11
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II.

Myers v. Anderson, 238 U. S. 368, 59 L. ed. 1349 upon which plaintiff relies, does not support the contention that plaintiff can proceed against the registration officer. In fact, the doctrine announced in *Myers*.

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v. *Anderson* affirmatively supports the contention that plaintiff cannot sue the registration officer in this case.

For these further and additional reasons plaintiff has not stated or made a case..... 31

III.

Regardless of whether or not the registration law of Oklahoma is valid; and if valid, regardless of whether or not it was properly administered, it cannot be held that plaintiff sustained any actionable injury or that he was denied any constitutional right..... 36

IV.

Plaintiff was required to apply for registration in 1916. Let us here assume, for the sake of argument, that he did in fact, as alleged, make proper application in 1916, and that same was wrongfully denied, and for the purpose of argument only, bar from consideration the rule already discussed under our Proposition I, that a plaintiff cannot in the same proceeding both assert the invalidity of statutes and rely upon them; still the plaintiff cannot recover, because he did not appeal from the wrongful decision, and thereby failed to exhaust his remedies provided by the Registration Statutes. For this additional reason the plaintiff has failed to make a case. 38

V.

The defendant registrar Parks had no authority to register the plaintiff in 1934. The statutes (Sec. 5654) limited his authority to register (1) those who subsequent to the next prior registration period had become qualified to vote in the precinct, and (2) those qualified electors who theretofore had not been registered because of absence, sickness, or other unavoidable misfortune. Plaintiff Lane does not claim to belong to either of these classes. For this further and additional reason plaintiff has failed to state or make a case..... 46

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VI.

It conclusively appears that in fact plaintiff Lane never applied for registration to the 1916 precinct registrar. It was so held in the Circuit Court of Appeals (R. 100). There is no proof that the 1916 registrar in the precinct where plaintiff lived ever refused registration of any colored voter who applied to him. There is no evidence that any colored voter in Wagoner County was ever wrongfully denied registration, upon proper application. 47

VII.

There was no proof of conspiracy upon the part of the defendants, or any of them, to deny negroes the right of registration. The Circuit Court of Appeals so held (R. 100) 51

VIII.

The Oklahoma Registration Statutes do not violate any of the constitutional provisions invoked by plaintiff. They cannot be overthrown by any or all the applicable rules for interpretation.

No resort can be had to administrative results or other extraneous matters, for the statutes are not ambiguous or of doubtful meaning.

The challenge for alleged discrimination is not sustainable. The sole test of the constitutionality of the alleged discriminatory provisions is this: Were those who did not vote in 1914 subjected in 1916 to the same standard of qualification as to the right to vote, as those who had voted in 1914?

(a) Statutes which are clear and unambiguous, as in the instant case, when challenged upon constitutional grounds, must be tested from the statutory provisions themselves, unaided by extraneous facts with respect to the manner in which they have been

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administered. Such extraneous matters are resorted to for the sole purpose of determining the intent of the Legislature, where the intent is left doubtful upon the face of the statutes. Petitioner's contention that the Oklahoma Registration Statutes violate constitutional provisions because the evidence here shows that actual administration under the statutes achieved a result contrary to constitutional provisions, is not supported by authorities cited upon the point. These cases are here examined and distinguished. 52

(b) The challenge of a statute upon the ground of unconstitutionality is not sustainable, unless the case is so clear as to be free of reasonable doubt. 61

(c) Where a statute has long been acquiesced in by the public and treated as valid by various governmental departments, ordinary presumption of constitutionality is greatly strengthened. 64

(d) The test of a registration statute alleged to be discriminatory is this: Does the statute set up for one class of electors a different or additional standard of qualifications to vote, from that required of other electors? The "Grandfather Clause" having been held unconstitutional, was not applied in 1916. Plaintiff Lane and others similarly circumstanced were only required in 1916 to meet the same tests already met by the 1914 voters. A plaintiff cannot successfully complain on account of an illegal standard to which he was never subjected. There was no discrimination. The Circuit Court of Appeals held that there was no discrimination (R. 100-101). The requirement for mandatory registration of those who had voted in 1914, and whose names were on the 1914 lists of voters, was for convenience. There was uniformity in basis of qualification for registration. 64

An examination of all the cases where registration laws have been stricken down upon the ground that they were discriminatory, shows that in every instance the statutes in question were overthrown because as to a given and complaining class statutory requirement was made for subjecting that class to an additional or different standard of qualifications to vote than that required of others. Exactly the same standards of qualifications to vote have always been required under the registration law of Oklahoma, as to all classes. The election officers at the polls in 1914 tested the voters by the same standards applied by the registrars in 1916. Petitioner's contention that the statutes are discriminatory appears to be without precedent.....	71
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In the Supreme Court of the United States

No. 460

OCTOBER TERM, 1938.

I. W. LANE, *Petitioner,*

vs.

JESS WILSON, JOHN MOSS AND MARION PARKS,

Respondents.

**(ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE TENTH CIRCUIT.)**

BRIEF *of* RESPONDENTS.

Statement.

Petitioner's brief does not accurately state the evidence. In the interest of brevity respondent will not restate the case, but merely point out the more glaring misstatements and omissions to be found in petitioner's brief. Petitioner's so-called "Preliminary Statement" found in his brief at pages 7 to 11 is purely argumentative, and is in fact nothing more than petitioner's own conclusions summarizing his whole argument. There is nothing in the record to show, as alleged in petitioner's brief, that this case is the climax of twenty-five years litigation involving the right of negroes to vote in Oklahoma, or that they have

been denied said right in the State, or in Wagoner County, but in truth and in fact the record shows that large numbers of negroes are registered and voted throughout the State (R., p. 48).

Petitioner makes a further attempt to charge the State of Oklahoma with alleged wrongful conduct by the statement found at pages 9 and 10 of his brief, to the effect that the Legislature convened immediately after the fall of the "Grandfather Clause" to enact the Registration Law of 1916 which he alleges continued the operation of said "Grandfather Clause", and had the effect of disfranchising Lane and others.

There is nothing whatsoever in the entire record to support or lend the least credit to this statement. This Court judicially knows that the decision in the *Guinn* case was rendered June 21, 1915, and that it was more than seven months later, as shown by the records of its proceedings, of which this Court will take judicial notice, that the Legislature convened in special session. And it is further shown by the records of such legislative proceedings that the said Legislature considered many and varied subjects concerning the affairs of the State generally; that the Registration Law was not in fact passed and approved until February 26, 1916. (See, Session Laws of Oklahoma 1916.)

Petitioner's purported summary of the evidence with respect to who was the 1916 registrar in plaintiff's precinct omits almost entirely both the oral and documentary evidence, which shows that Pace was the sole registrar in said precinct at the two registration periods in 1916. Petitioner fails to state that he himself introduced the only available public record of Wagoner County showing the lists of the voters registered in 1916 in said precinct, Gatesville number one, to-wit: Pages 71 and 72, volume one of the Coun-

ty Register of Election, which record, together with the supporting evidence, shows that Pace was the registrar in said precinct for both of the 1916 registration periods (R., pp. 39, *et seq.*). Petitioner further fails to show that the various registration certificates—originals produced by the voters themselves—were introduced in evidence, showing that same were issued and signed by Pace in the 1916 registration periods (R., pp. 40 to 42). Petitioner further fails to show that in addition to the testimony of Pace that he was the registrar at both of the 1916 registration periods, five other witnesses testified to the same effect. Thus it appears that petitioner omitted from his statement, almost in its entirety, the evidence upon which the Circuit Court of Appeals of the Tenth Circuit based its finding that Lane did not in fact apply for registration in 1916, which was the date for making the permanent registration lists of the voters, subject to additions to be made thereto from time to time, as provided by the statutes.

Petitioner, perhaps inadvertently, omits any mention of the testimony of one Jim Biggerstaff, whose testimony in the former trial of this cause was, by stipulation of the parties read in evidence, which testimony was to the effect that he was editor and custodian of the records of the Wagoner County Democrat, a newspaper of general circulation in Wagoner County, for the year 1916, and that such records show that in the issue of April 27, 1916, there was published a list of the registration officers for that year, which list included the name of James L. Pace as precinct registrar for Gatesville precinct number one (R., pp. 44 and 45).

We do not undertake, as a part of respondents' statement, to point out many misstatements of fact which appear in the course of the argument upon behalf of the petitioner. The argument so commingles questions of fact with the brief writer's conclusions that the purported state-

ments of fact in course of the argument are, it seems to us, quite unreliable. For illustration the following:

At page 66 of petitioner's brief it is said:

"It is not controverted that petitioner made application for registration, at the proper time, and that he was refused registration."

The respondents contended throughout the trial, and upon appeal, that the petitioner, Lane, never did apply for registration at the proper time and that Parks was without authority to register Lane in 1934.

At page 69, the brief writer, whilst undertaking to show that the respondent, Moss, participated in an alleged conspiracy, states:

"* * * respondent John Moss admitted instructing Parks about the registraion law; and reading to Parks, as a statement of the law, a certain letter he had received which construed the law as contended by respondents (R. p. 48)."

The letter discredits the above statement, insofar as it is invoked upon the conspiracy theory. It is as follows:

"Headquarters
Negro Democratic State Organization
228½ North Second Street
Muskogee, Oklahoma.

June 20, 1934

Mr. J. M. Biggerstaff, Editor,
The Wagoner Record
Wagoner, Oklahoma.

Dear Sir:

A word from one Democratic editor to another—I am, as you will notice, Publicity Director of the Negro Democrats of the state. There has come to my attention that an effort will be made to discredit Ne-

groes of the state in that they are forced to register as Democrats. I know here in this county and in other counties where Negroes have registered in large numbers, no efforts were made to force them to register as Democrats.

At the approaching registration period I hope no efforts will be made in your county to force Negroes to register as Democrats or to prevent the few eligible under the law from registering.

There will not be more than 100 in your entire county eligible to vote at this time under the law, which only allows those coming of age since last registration time or who have moved into the state one year since last registration and, of course, have lived in the county and precinct the required time.

Negroes in this county are mostly registered Democrats because they are anxious to have a voice in selecting public officials. Certainly we would not expect violating our laws to begin at registration periods.

Hoping all will end well for us, we are

Very truly yours,

C. G. Lowe, Editor

The Muskogee Lantern, Negro Democratic Newspaper and Publicity Manager Negro Democratic State Organization."

The respondent, Moss, merely admitted that in his opinion the foregoing letter correctly construed the Oklahoma Registration Law applicable to the 1934 registration, and that he had shown the letter, with a statement of his opinion with respect thereto. It will be noted that the respondent, Moss, merely exhibited the foregoing letter, which was by the Publicity Director of the Negro Democrats of the State of Oklahoma, and stated in substance that in his opinion the State Director had correctly con-

strued the Oklahoma Registration Law. The evidence does not show that this respondent did anything whatsoever even tending to connect him with the alleged conspiracy. (The evidence does not connect the respondent Wilson with the alleged conspiracy.)

At page 39 of petitioner's brief it is said that those who voted in 1914 could continue to vote thereafter without being registered at all. This is not correct.

At page 61 of petitioner's brief it is said:

"* * * Very probably, persons who were not citizens, and also felons, convicts, paupers, idiots and lunatics actually voted in fulsome hordes in 1914, under the Grandfather Clause—under the terms of the Grandfather Law, every felon, pauper, and idiot in the state could vote who could prove that he was on 'January 1, 1866 * * * entitled to vote', etc. * * * Yet by the effect of Sec. 5654, every alien, felon, idiot or lunatic who voted in 1914 under the Grandfather Law, whether in consonance with its spirit or contrary to its terms, is today duly qualified to vote, despite the requirements of said Sec. 1, of Article III, of the State Constitution."

Said section 1, article III of the State Constitution as originally adopted in 1907 has always been in force since its adoption. After stating the qualifications of electors, there was a proviso, as follows:

"* * * Provided, that no person adjudged guilty of a felony, subject to such exceptions as the Legislature may prescribe, nor any person, kept in a poorhouse at public expense, except Federal, Confederate and Spanish-American ex-soldiers or sailors, nor any person in a public prison, nor any idiot or lunatic, shall be entitled to register and vote."

We, therefore, challenge the 'above' quoted statement in petitioner's brief as wholly unfounded.

As an illustration of petitioner's confusion of theories and his misconception of the facts, attention is called to the statement at page 39 of his brief, that Lane had *only ten days in this life* within which to register and preserve the privilege of franchise. Here the petitioner positively commits himself to the theory that the respondent, Parks, the 1934 registrar in petitioner's precinct, had no authority whatever under the law to register petitioner, yet failure of Parks to register Lane is the alleged ground for this suit in damages. In other words, whilst saying that Parks had no authority under the challenged Registration Statutes to register Lane, petitioner charges the respondents with gross wrongs, because Parks did not register Lane in 1934.

For want of reliability of statement in petitioner's brief, we are under the necessity of suggesting, most respectfully, an examination of the very short record which covers the facts involved.

Respondents contend that the record and petitioner's brief, considered as a whole, commit the petitioner irretrievably to this absurdity, to-wit: Petitioner says that the Oklahoma Registration Statutes are utterly void. He admits that he, the petitioner, declined to comply with the requirements of the Registration Law, because he believed same to be unconstitutional. He claims that he applied at the general registration period in 1916 for registration, and that upon the denial of his application he declined to appeal, as required by the statute. He says as one of the grounds for declaring the challenged statutes unconstitutional, that he had only ten days within which to register, or be forever barred, and that this ten-day period was in 1916. Yet he sues Parks, the 1934 registration officer of petitioner's precinct, for failure of Parks to register petitioner in 1934, at the same time saying that under the Oklahoma law Parks had no authority to register him in 1934. Re-

spondents claim that there is no theory, whatsoever, presented, upon which recovery can be had, and that the pretended action is wholly without any precedent to support it, and contrary to reason.

OUTLINE OF CONTENTIONS UPON BEHALF OF DEFENDANTS, THE RESPONDENTS.

I.

Defendants contend that plaintiff's own petition and theory foreclose him from the recovery of damages, because if the registration statutes of Oklahoma are void, as claimed by plaintiff, he had the right to vote without registration, and therefore no damage was done.

The principal object of the petition is to procure a decision holding that the Oklahoma statutes with respect to registration are unconstitutional and therefore void. Plaintiff's contentions center upon this theory. He seeks to recover damages from the 1934 precinct registrar for denial of registration, and joins the other defendants for alleged conspiracy.

II.

Defendants further contend that plaintiff should have demanded his right to vote at the polls, and if there denied, he should have sued the election officers rather than the registrar.

III.

Defendants contend that regardless of the validity or invalidity of the Oklahoma Registration Law, and regardless of the manner of its administration, it cannot be held that plaintiff has sustained any actionable injury.

IV.

Defendants contend that the first registration period in 1916 was the time when plaintiff was required to register, and that if application was then made and wrongfully denied, as alleged, plaintiff's exclusive remedy was by appeal to the courts as provided by the statutes. This remedy he did not invoke.

V.

Defendants further contend that the 1934 registrar had no authority, under the statutes or otherwise, to register plaintiff in 1934.

VI.

Defendants further contend that in fact, as shown by plaintiff's own admissions and other conclusive evidence, plaintiff did not apply to the then registrar for registration in 1916.

VII.

Defendants say that petitioner's brief does not accurately or fairly state the evidence, and that in fact there was no evidence of conspiracy or other wrongdoing upon the part of the defendants, or any of them.

VIII.

Defendants contend that the challenged provisions of the statutes are constitutional and valid. They cannot be overthrown under the rules for statutory interpretation here applicable.

The registration statutes are clear and unambiguous, and hence do not permit of resort to administrative results or other extraneous matters for their interpretation.

These statutes are not discriminatory. The test as to qualifications for registration in 1916 was the same as that which the 1914 voters had met. Lane was never subjected to the provisions of the "Grandfather Clause"; hence he cannot be heard to complain of the illegal test or standard in those void statutory provisions.

NOTE: Throughout the proceedings defendants contended that the petition did not state a cause of action. They objected to the introduction of any evidence on this ground. At the conclusion of all the evidence defendants moved for a directed verdict in their favor, which motion was sustained.

I.

Plaintiff cannot in the same action both assert that the Oklahoma Registration Statutes are void, and rely upon them. If the statutes are void, as he contends, registration would have been a vain thing. Accepting the allegations of the petition for the purposes of this case only, and this Court should so accept them without passing upon the validity of the challenged statutes, it must be held that plaintiff has not been damaged and cannot recover, for if these allegations are taken as true, for the purposes of the case, he had the right to vote without registration. The plaintiff thus has foreclosed himself from invoking the several questions of law and of fact which he seeks to present. For these and other reasons hereinafter shown, plaintiff has not stated a cause of action. He presents no federal question for decision.

Petitioner bases his alleged right of recovery solely upon his contention that the Registration Laws of Oklahoma are void. The Circuit Court of Appeals so stated petitioner's theory (R., p. 100). As to petitioner's theory also see various excerpts hereinafter set forth under this head, taken from petitioner's pleading, assignments of error, and brief.

Giles v. Harris, 189 U. S. 475, 47 L. ed. 909, conclusively supports the contention that plaintiff cannot, whilst asserting the invalidity of the registration statutes, recover for denial of registration. The bill in equity was brought by a colored man for himself and on behalf of more than five thousand other negro citizens of Montgomery, Alabama, similarly situated, against the board of registrars of that county. The prayer of the bill was that the defendant registrars should be required to register the plaintiff and others similarly circumstanced. The bill alleged the com-

plainant's qualifications as an elector, showed his application and the application of more than five thousand other negroes of the county for registration, and the denial of registration. It was alleged that the refusal was arbitrary on the ground of their color, and it was further claimed that the same thing had been wrongfully done all over the state of Alabama. It was further charged that the white population of Alabama had framed the state constitution so as to afford a fraudulent instrument giving opportunity to effect wholesale fraud and wrongful denial of the right of negroes to be registered. The bill set forth the material sections of the state constitution and the general plan about which complaint was made, which general plan, as stated by this Court, was as follows:

"By Sec. 178 of article 8, to entitle a person to vote he must have resided in the state at least two years, in the county one year, and in the precinct or ward three months, immediately preceding the election, have paid his poll taxes, and have been duly registered as an elector. By Sec. 182 idiots, insane persons, and those convicted of certain crimes are disqualified. Subject to the foregoing, by Sec. 180, before 1903 the following male citizens of the state, who are citizens of the United States, were entitled to register, *viz*: *First*. All who had served honorably in the enumerated wars of the United States, including those on either side in the 'war between the states.' *Second*. All lawful descendants of persons who served honorably in the enumerated wars or in the war of the Revolution. *Third*. 'All persons who are of good character and who understand the duties and obligations of citizenship under a republican form of government.' As we have said, according to the allegations of the bill, this part of the Constitution, as practically administered and as intended to be administered, let in all whites and kept out a large part, if not all, of the blacks, and those who were let in retained their right to vote after 1903,

when tests which might be too severe for many of the whites as well as the blacks went into effect. By Sec. 181, after January 1, 1903, only the following persons are entitled to register: *First*. Those who can read and write any article of the Constitution of the United States in the English language, and who either are physically unable to work or have been regularly engaged in some lawful business for the greater part of the last twelve months, and those who are unable to read and write solely because physically disabled. *Second*. Owners or husbands of owners of 40 acres of land in the state, upon which they reside, and owners or husbands of owners of real or personal estate in the state assessed for taxation at \$300.00 or more, if the taxes have been paid, unless under contest. By Sec. 183 only persons qualified as electors can take part in any party action. By Sec. 184 persons not registered are disqualified from voting. By Sec. 185 an elector whose vote is challenged shall be required to swear that the matter of the challenge is untrue before his vote shall be received. By Sec. 186 the legislature is to provide for registration after January 1, 1903, the qualifications and oath of the registrars are prescribed, the duties of registrars before that date are laid down, and an appeal is given to the county court and supreme court if registration is denied. There are further executive details in Sec. 187, together with the above-mentioned continuance of the effect of registration before January 1, 1903. By Sec. 188, after the last mentioned date, applicants for registration may be examined under oath as to where they have lived for the last five years, the names by which they have been known, and the names of their employers. This, in brief, is the system which the plaintiff asks to have declared void."

This Court, having analyzed the bill, held that its principal object was to obtain registration. *Without passing upon the constitutionality of the challenged Alabama laws, it was*

held that recovery could not be had because plaintiff alleged that the Alabama laws relating to registration were void, and at the same time invoked the alleged void laws in the same proceeding. The following from the opinion, which was by the learned Justice HOLMES, squarely supports the defendants in this case:

"The difficulties which we cannot overcome are two, and the first is this: The plaintiff alleges that the whole registration scheme of the Alabama Constitution is a fraud upon the Constitution of the United States, and asks us to declare it void. But, of course, he could not maintain a bill for a mere declaration in the air. *He does not try to do so, but asks to be registered as a party qualified under the void instrument. If, then, we accept the conclusion which it is the chief purpose of the bill to maintain, how can we make the court a party to the unlawful scheme by accepting it and adding another voter to its fraudulent lists?* If a white man came here on the same general allegations, admitting his sympathy with the plan, but alleging some special prejudice that had kept him off the list, we hardly should think it necessary to meet him with a reasoned answer. But the relief cannot be varied because we think that in the future the particular plaintiff is likely to try to overthrow the scheme. *If we accept the plaintiff's allegations for the purposes of his case, he cannot complain. We must accept or reject them.* It is impossible simply to shut our eyes, put the plaintiff on the lists, be they honest or fraudulent, and leave the determination of the fundamental question for the future. If we have an opinion that the bill is right on its face, or if we are undecided, *we are not at liberty to assume it to be wrong for the purposes of decision.* It seems to us that unless we are prepared to say that it is wrong, that all its principal allegations are immaterial, and that the registration plan of the Alabama Constitution is valid, *we cannot order the plaintiff's name to be registered.* It is not an answer

to say that if all the blacks who are qualified according to the letter of the instrument were registered, the fraud would be cured. In the first place, there is no probability that any way now is open by which more than a few could be registered; but if all could be, the difficulty would not be overcome. *If the sections of the Constitution concerning registration were illegal in their inception, it would be a new doctrine in constitutional law that the original invalidity could be cured by an administration which defeated their intent. We express no opinion as to the alleged fact of their unconstitutionality beyond saying that we are not willing to assume that they are valid, in the face of the allegations and main object of the bill, for the purpose of granting the relief which it was necessary to pray in order that that object should be secured.*" (Italics ours.)

With respect to plaintiff's claim that the Oklahoma registration laws were enacted by the white people of the state for the purpose of defrauding the negroes of the right of suffrage, attention is called to the further statement regarding the claims of Giles, as follows:

"The other difficulty is of a different sort, and strikingly reinforces the argument that equity cannot undertake now, any more than it has in the past, to enforce political rights, and also the suggestion that state constitutions were not left unmentioned in Sec. 1979 by accident. In determining whether a court of equity can take jurisdiction, one of the first questions is what it can do to enforce any order that it may make. This is alleged to be the conspiracy of a state, although the state is not and could not be made a party to the bill. *Hans v. Louisiana*, 134 U. S. 1, 33 L. ed. 842, 10 Sup. Ct. Rep. 504. The Circuit Court has no constitutional power to control its action by any direct means. And if we leave the state out of consideration, the court has as little practical power to deal with the people of the state in a body. The bill imports that the great

mass of the white population intends to keep the blacks from voting. To meet such an intent something more than ordering the plaintiff's name to be inscribed upon the lists of 1902 will be needed. If the conspiracy and the intent exist, a name on a piece of paper will not defeat them. Unless we are prepared to supervise the voting in that state by officers of the court, it seems to us that all that the plaintiff could get from equity would be an empty form. Apart from damages to the individual, relief from a great political wrong, if done, as alleged, by the people of a state and the state itself, must be given by them or by the legislative and political department of the government of the United States."

Clearly, plaintiff's petition primarily presents a dilemma from which he has no escape, under the sound and uniformly applied rule above stated in this decision by this Court. His main effort, upon the whole, is to show that the very statutes which he invokes are void. *This Court cannot make for plaintiff a theory.* Without doubt he is here bound by his own theory as shown by his petition, his contentions at the trial, the assignments of error, and his brief, to all of which we shall refer more fully directly.

If the statutes are void, as alleged, it is as if they had never been, and rights cannot be acquired or built up under them, and no proceeding can be had against anyone for refusing to conform to the void statutes. In Cooley's Constitutional Limitations, 6th Edition, p. 222, it is said:

"When a statute is adjudged to be unconstitutional, it is as if it had never been. Rights cannot be built up under it; contracts which depend upon it for their consideration are void; it constitutes a protection to no one who has acted under it, and no one can be punished for having refused obedience to it before the decision was made." (Italics ours.)

Plaintiff, whilst saying that there was no registration law operative within the State of Oklahoma, sues the defendant registrar for alleged failure to conform to the statutes and do for the plaintiff a vain thing, which plaintiff himself asserts would have been void. The underlying reason for denying plaintiff the right to both assert that a statute is void and rely upon it in the same proceeding, is manifestly sound. But few attempts have been made in federal courts to do the unreasonable and impossible thing which plaintiff undertakes. Hence, there are not many federal cases announcing the rule, though there are many state decisions which support it.

The decision in *Hurley v. Commission of Fisheries of Virginia*, 257 U. S. 223, 66 L. ed. 206, is grounded upon the same principle that controlled in *Giles v. Harris, supra*. Appellant Hurley applied for an injunction to restrain the Commission of Fisheries from removing the stakes and marks which designated the boundaries of certain oyster grounds in the Rappahannock River, planted by appellant, and which he claimed the right to occupy, and thereby opening the grounds for public use. The appellant asserted that the Commission was proceeding under a state statute invalid because it failed to provide for proper notice and hearing, and that the proposed action of the Commission would deprive appellant of his property without due process of law, contrary to the Fourteenth Amendment. This Court held that the appellant had no right to injunction, because his action was necessarily based upon a statute under which the Commission was acting, and that the appellant could not in the same proceeding both assail the statute and rely upon it. The opinion is in part as follows:

"A majority of the three judges composing the court below concluded (264 Fed. 116) that the Commission had acted in substantial compliance with the chal-

lenged statute, that whatever rights of property appellant claimed in respect of the specified lands, or the oysters thereon, *were necessarily based upon the statute itself, and that he could not both assail it and rely upon it in the same proceeding* (Kansas City, M. & B. R. Co. v. Stiles, 242 U. S. 111, 117, 61 L. ed. 176, 186, 37 Sup. Ct. Rep. 58). * * * We find no reason to interfere with this decree and it is affirmed." (Italics ours.)

In order to show beyond doubt that plaintiff is in an impossible position and within the rule here under discussion, we now refer to or quote, either in whole or in part, from the record, the following: Plaintiff's petition, parts of the trial proceedings below whereby plaintiff committed himself to a fixed theory, part of the assignments of error, parts of petitioner's brief, the Fourteenth and Fifteenth amendments to the Constitution of the United States, that part of the Oklahoma Constitution invoked by plaintiff, statutory provisions under which plaintiff undertakes his suit, and the Oklahoma provision for the registration of voters.

The petition alleges:

At page 1 of the record:

"* * * that this action involves a federal question, namely, the right of suffrage of plaintiff under the Constitution of the United States, the Fourteenth and Fifteenth Amendments thereto, and the laws of the United States enacted pursuant thereto."

And at page 2 of the record:

"5. That under the laws of the State of Oklahoma (Section 5652, Okla. Stat. 1931), registration is a prerequisite to the right of the citizens of said State to vote in any election held in said state, and unless and until said plaintiff is registered; as provided by

the said laws of Oklahoma, the said plaintiff will not be entitled to vote at any election held in the State of Oklahoma, and in said County and Precinct."

And at page 3 of the record:

"7. That such a denial of the right of said plaintiff to vote at said election for said Representatives to the Congress and for said State and County officers, will constitute to plaintiff a denial of the right of suffrage as a citizen of said County and State and of the United States, and will constitute to plaintiff a denial of the equal protection of the laws, contrary to the Constitution and laws of the State of Oklahoma, and contrary to the Constitution of the United States, the Fourteenth and Fifteenth Amendments thereto and to the laws of the United States enacted pursuant thereto."

And at page 4 of the record:

"11. That the respective registrars in said County and precincts, during the registration period in May, 1916, and of all subsequent registration periods respectively, informed said plaintiff, that they had no authority or instructions to register any Negroes; and the registrars of said precincts during each and all of said registration periods refused to register any Negroes including this plaintiff, solely on account of their race, color and previous condition of servitude."

At paragraphs 12, 13 and 14 (R. 4-6), the petition alleges a conspiracy upon the part of the defendants to deprive the plaintiff of his right to register and vote.

At paragraphs 15, 16, 17 and 18 (R. 6-7), the petition alleges:

"15. That pursuant to the laws of the State of Oklahoma, the registration period for the aforementioned election of November 6, 1934, began on October 17, 1934, and closed on the 26th day of October, 1934.

That on the 24th day of October, 1934, this plaintiff, I. W. Lane, being then a duly qualified elector of said precinct, county and state aforesaid, duly presented himself to the defendant, Marion Parks, precinct registrar aforesaid; and at said time, this said plaintiff made application to said defendant, Marion Parks, for registration and for a registration certificate, which said registration and registration certificate said Marion Parks refused said plaintiff solely on account of the race, color and previous condition of servitude of plaintiff; and at said time said Marion Parks, precinct registrar aforesaid, advised this plaintiff that he had been forbidden by said John Moss, County Judge of Wagoner County, Oklahoma, and by Jess Wilson, County Registrar of Wagoner County, Oklahoma, to register any Negroes.

"16. Further, that in refusing to register this plaintiff, as set forth above, and in making it impossible for plaintiff to register and to vote in the aforementioned election, said defendants were acting pursuant to the aforementioned conspiracy; said defendants, and each of them, were and are violating the rights of plaintiff, under the Constitution of Oklahoma, and under the Constitution of the United States, the 14th and 15th amendments thereto, and the laws of the United States enacted pursuant thereto.

"17. Further, the illegal acts of the defendants Jess Wilson, John Moss and Marion Parks hereinabove alleged, constitutes a violation of Section 31, Chapter 2 of Title 8 of United States Code (R. S. Sec. 2004). That in the violation of the rights of said plaintiff, said defendants, and each of them, were acting under color of certain statutes of the State of Oklahoma hereinafter mentioned, and under color of custom and usage in said County of Wagoner and State of Oklahoma, and caused said plaintiff to be deprived of rights, privileges, and immunities secured by the Constitution and laws of the United States.

"18. Further, that in the illegal acts hereinabove complained of, said defendants and each of them were acting under the color of Chapter 29 of the Oklahoma Statutes of 1931, and especially under color of Article 3 of said chapter, and, under color of Section 5654 of said Article 3, Chapter 29 of said laws of Oklahoma, 1931, and Section 5657 of said Article and Chapter. That said Section 5654, Article 3, Chapter 29 (C. O. S. 1921, Sec. 6252), provides as follows:"

(Here the petition sets forth, by copy, the vital parts of the Oklahoma registration statutes.)

Paragraph 19 of the petition (R. 9-10) is as follows:

"19. Further, plaintiff alleges, upon information and belief, that the above mentioned Section 5654, Okla. Stat. 1931 (C. O. S. 1921, Sec. 6252), and Sec. 5657, Okla. Stat. 1931 (C. O. S. 1921, Sec. 6255) are mere subterfuges aimed exclusively and directly at and against Negro citizens of the United States residing in the State of Oklahoma, and further that said laws are and were designed for the exclusive purpose of depriving said Negro citizens of the right of suffrage, and in violation of Section 6, Article 1 of the Constitution of Oklahoma and also in violation of the 15th Amendment of the Constitution of the United States, and in violation of the laws of the United States enacted pursuant thereto. Said statutes and laws are further an illegal and cunning attempt to achieve the illegal purpose sought by '(The Amendment) Section 4a, Grandfather Clause of Article iii of the Constitution of Oklahoma, and to evade the effect of the decision of the Supreme Court of the United States '(*Guinn v. United States*', decided June 21st, 1915, 238 U. S. 347, 59 L. ed. 1340.) That said State Statutes designated for the purpose aforesaid were enacted on February 26, 1916, immediately after the above mentioned decision of the Supreme Court of the United States; and said laws provide for an unjust, unreasonable and illegal classification of the electors of the United States and of

the State of Oklahoma; they give to precinct registrars therein provided for an arbitrary and capricious discretion to deny or refuse qualified Negro electors the right of suffrage; and said State laws deny and abridge the right of Negro citizens, including this plaintiff, to vote, solely on account of race, color and previous condition of servitude. That precinct registrars of Oklahoma in general in denying the right to register and the right of suffrage throughout said State of Oklahoma, and the defendants hereinabove named in denying and refusing to permit this plaintiff to register or to vote, as hereinabove specified, were and are carrying out the patent and expressed intent and design of said State laws."

At paragraph 20 of the petition (R. 10) plaintiff charges that the alleged conspiracy concocted by defendants, and the illegal acts of the defendants, actually damaged plaintiff in the sum of \$5000.00, and that he should recover an additional \$5000.00 as punitive damages.

Plaintiff's requested instructions, particularly Nos. 3 and 4 (R. 53-56), asked for charges to the jury that the Oklahoma registration statutes are void, in that said statutes deny the plaintiff due process of law and discriminate between white persons and negroes.

In the Assignments of Error, sections II, III, and IV (R. 79-80), it is alleged that the Oklahoma registration statutes are unconstitutional and void, and that the court erred in holding same constitutional. Said Sec. II is in part as follows:

"* * * and the trial court erred in holding and instructing the jury in said cause that said Registration Laws were valid and not unconstitutional, to all of which plaintiff duly objected and excepted."

Section III of the assignments is as follows:

"It appearing from the face of the Oklahoma Registration Laws of 1916 (O. S. 1931, Sec. 5654), that said law is an attempted revitalization of the illegal Grandfather Clause, Art. III, Sec. 4a, Oklahoma Constitution, Sec. 13450, O. S. 1931; or the same invalid law in a new disguise of words, and having the same discriminatory and unconstitutional intent, operation, and effect, being violative of the 15th Article of Amendment to the Constitution of the United States, the Honorable trial court erred in holding and adjudging, and in instructing the jury in said cause that said laws were and are valid and not unconstitutional, to which plaintiff duly objected and excepted."

Section IV of the assignments reads thus:

"The said Registration Laws of the State of Oklahoma (O. S. 1931, Sec. 5654), as made and enforced by the State, abridge the privileges and immunities of plaintiff Lane and of other citizens of the United States of his color and similarly situated, deprives them of liberty and property without due process of law, and denies them the equal protection of the laws; said Registration Laws are violative of the 14th Article of Amendment to the Constitution of the United States. The trial court erred in holding, adjudging and in instructing the jury upon the trial of said cause that said laws were valid and not violative of the said 14th Amendment."

The following appears in petitioner's brief at page 7:

"In the trial court petitioner Lane, as plaintiff, sought of the defendants Five Thousand Dollars (\$5000.00) actual damages and Five Thousand Dollars (\$5000.00) punitive damages for and on account of alleged deprivation of his right to register as an elector and, correlatively, of the right to vote, in violation of the Fourteenth and Fifteenth Articles of Amendment to the Constitution of the United States and of Federal laws enacted pursuant thereto, and under color of cer-

tain laws and statutes of the State of Oklahoma, alleged to be unconstitutional and void as violative of said Fourteenth and Fifteenth Amendments."

Commencing at page 42 of petitioner's brief, this language appears:

"The heart and essence of said registration laws, so far as the present question of constitutionality is concerned, is embodied in Sec. 5654, O. S. 1931, set forth in full in this brief at page 5, and this entire controversy centers around the question whether said Sec. 5654 is unconstitutional, as violating the 14th and 15th Amendments to the Constitution of the United States, and further, whether said section is an unwarranted and unconstitutional (under the state Constitution) restriction of the qualification of an elector, as provided by Section 1, Article III of the State Constitution." (Italics ours.)

At various other places in the record and in petitioner's brief it appears that what plaintiff is really trying to do is to recover damages for alleged non-compliance upon the part of the precinct registrar with state statutes which plaintiff vigorously alleges to be unconstitutional and void. Throughout the whole proceeding, and with respect to a single cause of action, plaintiff has both asserted that the Oklahoma registration statutes are void, whilst undertaking to rely upon them.

For the convenience of the Court we here copy from the Oklahoma Statutes, 1931, the vital parts of the registration laws, italicizing for emphasis that part of the statutes which the plaintiff contends makes the whole scheme void:

SEC. 5652. "It shall be the duty of every qualified elector in this state to register as an elector under the provisions of this Act, and no elector shall be permitted to vote at any election unless he shall register

as herein provided, and no elector shall be permitted to vote in any primary election of any political party except of the political party of which his registration certificate shows him to be a member."

SEC. 5654. "It shall be the duty of the precinct registrar to register each qualified elector of his election precinct who makes application between the thirtieth day of April, 1916, and the eleventh day of May, 1916, and such person applying shall at the time he applies to register be a qualified elector in such precinct and he shall comply with the provisions of this act, and it shall be the duty of every qualified elector to register within such time; provided, if any elector should be absent from the county of his residence during such period of time, or is prevented by sickness or unavoidable misfortune from registering with the precinct registrar within such time, he may register with such precinct registrar at any time after the tenth day of May, 1916, up to and including the thirtieth day of June, 1916; but the precinct registrar shall register no person under this provision unless he be satisfied that such person was absent from the county or was prevented from registering by sickness or unavoidable misfortune, as hereinbefore provided. *And provided that it shall be the mandatory duty of every precinct registrar to issue registration certificates to every qualified elector who voted at the general election held in this state on the first Tuesday after the first Monday in November, 1914, without the application of said elector for registration, and, to deliver such certificate to such elector if he is still a qualified elector in such precinct and the failure to so register such elector who voted in such election held in November, 1914, shall not preclude or prevent such elector from voting in any election in this state; and provided further, that wherever any elector is refused registration by any registration officer such action may be reviewed by the District Court of the county by the aggrieved elector by his filing within ten days a pe-*

tition with the clerk of said court, whereupon summons shall be issued to said registrar requiring him to answer within ten days, and the District Court shall be a expeditious hearing and from his judgment an appeal will lie at the instance of either party to the Supreme Court of the State as in civil cases; and provided further, that the provisions of this act shall not apply to any school district elections. Provided further, that each county election board in this state shall furnish to each precinct election board in the respective counties a list of the voters who voted at the election in November, 1914, and such list shall be conclusive evidence of the right of such person to vote." (Italics ours.)

Sec. 5657, so far as material here, is this:

"Each qualified elector in this State may be required to make oath that he is a qualified elector in such precinct, and shall answer under oath any questions touching his qualifications as an elector and give under oath the information required to be contained in a registration certificate. *Except in the case of a qualified elector who voted at the general election held in this state on the first Tuesday after the first Monday in November, 1914, in which case it shall be the mandatory duty of the precinct registrar to register such voter and deliver to such voter a registration certificate and the failure to so register such elector and to issue such certificate shall not preclude or prevent such elector from voting at any election in this State.* If any person shall fail or refuse to give the information required in a registration certificate, or fail or refuse to answer any questions propounded to him by said registrar touching his qualifications as an elector, such person shall not be registered and no certificate of registration shall be issued to him. If said registrar shall be satisfied that any person who makes application to register is a qualified elector in the precinct at such time, and if such person complies with all of the pro-

visions of this act, then said registrar shall detach the original registration certificate, properly filled in and containing the information required in this act, and deliver to such person such original registration certificate. * * * (Italics ours.)

We admit, as claimed by petitioner, that if the above italicized and emphasized parts of sections 5654 and 5657, providing for mandatory registration of those qualified electors who voted in 1914, are void, the whole registration scheme falls. Under our Proposition II authorities upon this point are cited.

This Court is of course familiar with that part of the Fourteenth Amendment to the United States Constitution upon which plaintiff relies, and with the Fifteenth Amendment to the United States Constitution. They here follow, for the convenience of counsel.

Section 1 of the Fourteenth Amendment is in part as follows:

“ * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

The Fifteenth Amendment is this:

“Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

“Sec. 2. The Congress shall have power to enforce this article by appropriate legislation.”

In furtherance of Sec. 2 of the Fifteenth Amendment, the Congress enacted Sec. 1979 of the Revised Statutes (Sec. 43, Title 8, U. S. Code Annotated), which is as follows:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

The above is the section under which plaintiff sues. It gives a right of action against officers for enforcing a void statute and thereby depriving one of a right *under color of a void law*. It has no application except where the action is based upon a wrong by an officer committed in the course of the enforcement and in the pursuance of a void state statute. In *Myers v. Anderson*, 238 U. S. 366, 59 L. ed. 1349, this Court held that "the enforcement of a state law is of itself the wrong which gives rise to the cause of action". This Sec. 1979 applies in an election case only when a void state law commands the election officials to deprive an elector of his right to vote. It was doubtless enacted primarily for the purpose of foreclosing officials from a complete defense by showing good faith and want of malice. Independent of statutory authority, all persons have the common-law right of action for deprivation of rights guaranteed by the Constitution. In a common-law action for deprivation of constitutional rights in the course of administration of void statutes, good faith and want of malice is a defense. Under Sec. 1979 officers are held bound to know the law, and they are required to disregard void statutes. In the instant case the defendant registrar was required to disregard and not act under the registration statutes, if they are void.

Plaintiff seems to rely somewhat upon Sec. 2004 of the

Revised Statutes (Sec. 31, Title 8, U. S. Code Annotated), which is as follows:

"All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding."

This section does not provide any right of action. It merely declares a substantive right theretofore existing. It does not in itself provide any remedy for the infringement of a declared right, and hence it is without importance in this case.

In brief summary, plaintiff's case is this: He claims the right of registration under statutes alleged to be void. He asserts that the registration laws of Oklahoma are void, and in the same proceeding and in a single cause of action, he claims damages because the defendant registrar did not add plaintiff's name to the registration lists, asserted to be void. He asks for that which Justice HOLMES in *Giles v. Harris*, *supra*, called a *naked declaration in the air*. Under this proposition we are asking that this Court do precisely what it did in *Giles v. Harris*, and hold the plaintiff to his own theory and deny him any relief, because he cannot both assert the invalidity of the statutes in question, and sue in damages for non-compliance with the alleged void registration statutes.

The petitioner undertakes to meet the contention above made by invoking *Myers v. Anderson*, 238 U. S. 368, 59 L. ed. 1349. We shall show hereinafter that *Myers v. An-*

derson was an entirely different case from that here presented. Plaintiffs there sued the officials who held an election at which the plaintiffs were entitled to vote, and were wrongfully denied the right of suffrage. But here the principal defendant was a mere registration officer, with no duties to perform on any election date. Beside, by plaintiff's own theory, which is that the Oklahoma Registration Law is void, plaintiff had the right to vote without registration. *If plaintiff's theory is correct and if he applied for registration in 1916, he should have presented himself at the polls and there demanded the right of suffrage. Had he done so, and had the officials at the polls denied his right to vote, then he would have had a right of action against the election officials who prevented his voting, if the Registration Law is void.* In the petitioner's brief an effort is made to anticipate this argument by saying that Oklahoma has a criminal statute forbidding an unregistered person to vote or offer to vote at an election. If the Registration Law is void, it is manifest that this statute is void and inoperative. *We think it safe to say that there is no reported case sustaining the view that a registration officer may be sued in damages for failure to register an applicant under a void Registration Law, and we submit that this view is utterly absurd.*

The case of *Nixon v. Herndon*, 273 U. S. 537, 71 L. ed. 759, cited by petitioner; likewise fails to support him. There the action was against the judges officiating at the polls, for wrongfully refusing the right of suffrage. If the Oklahoma Registration Law is void, it must be conceded that if the defendant Registrar had registered the plaintiff, Lane, the act of registration and the certificate in evidence thereof would have had no force or effect whatsoever. *The defendant Registrar is sued, according to the plaintiff's own theory, for failure to do a vain thing.* The defendants

other than Parks are sued as alleged conspirators conspiring with Parks to prevent the registration of Lane and other negroes. *Plaintiff's pretended case, and the theory presented in support thereof, are not only without precedent in the reported cases, but without any support in reason.*

It seems apparent that there is no federal question here presented for decision. The federal courts should not have assumed jurisdiction of the case, since no cause of action is stated necessarily involving a federal question. The rule that a federal court cannot pass upon a constitutional question unless presented in a justiciable controversy is too well known to require citation of authority. The plaintiff has failed to state a justiciable controversy such as to require decision of this Court upon the constitutional questions sought to be presented.

II.

Myers v. Anderson, 238 U. S. 368, 59 L. ed. 1349, upon which plaintiff relies, does not support the contention that plaintiff can proceed against the registration officer. In fact, the doctrine announced in *Myers v. Anderson* affirmatively supports the contention that plaintiff cannot sue the registration officer in this case.

For these further and additional reasons plaintiff has not stated or made a case.

Myers v. Anderson, in no way supports the plaintiff upon the point. The case arose in Maryland and was prosecuted successfully against a registrar. In 1896 the Maryland Legislature enacted a valid general election law applicable to all parts of the state, and to every precinct thereof, and every qualified elector. Under this general valid registration law every qualified elector had to register, and none could vote without registration. Later, in 1908, a special

act was passed by the Legislature to fix the qualifications of voters at municipal elections in the City of Annapolis, and to provide for the registration of said voters in the city. The defendant registrar, acting under this special act, refused plaintiff registration. The suit was brought against the registration officer for denial of the right of registration. The action was sustained, because of said refusal. The void act of 1908 purported to require the registrar defendant to refuse the plaintiff registration. The denial was solely because of the terms of the void 1908 act. *When the 1908 act was stricken down there still remained the valid prior act of 1896, which made registration necessary to vote.* The situation, in brief, was this: *The registration officer should have registered the plaintiff under the still existing valid law of 1896, and should have disregarded the void law of 1908.* The situation here is wholly unlike that. In referring to the 1896 valid registration law this Court said:

"In 1896 a general election law comprising many sections was enacted in Maryland. Laws of 1896, Chap. 202, p. 327. It is sufficient to say that it provided for a board of supervisors of elections in each county to be appointed by the governor, and that this board was given the power to appoint two persons as registering officers and two as judges of election for each election precinct or ward in the county. Under this law each ward or voting precinct in Annapolis became entitled to two registering officers."

After holding void the special act of 1908 applicable to Annapolis, this Court proceeded to make it clear that the defendant registrar should have registered the plaintiff under the still existing and valid act of 1896, saying:

"The qualification of voters under the Constitution of Maryland existed and the statute which previously provided for the registration and election in Annapolis was unaffected by the void provisions of the statute

which we are considering. The mere change in some respects of the administrative machinery by the new statute did not relieve the new officers of their duty, nor did it interpose a shield to prevent the operation upon them of the provisions of the Constitution of the United States and the statutes passed in pursuance thereof." (Italics ours.)

Thus having held that the plaintiff was entitled to registration under the 1896 act, that the defendant registrar should have registered him, and that by denial of his right of registration the plaintiff had been deprived of the right to vote, this Court concluded that the defendant registrar was properly sued. But here what the plaintiff Lane is really saying is that the Oklahoma registration law was utterly void, that there was no provision whatever for registering the plaintiff in 1934, and that notwithstanding the absence of any statutory requirement for plaintiff's registration, he is entitled to sue the defendant registrar in damages for failure of registration. Thus plaintiff reduces his claim to absurdity absolute.

We concede the contention of petitioner that if the statutory provisions making it mandatory to register in 1916 all qualified electors who had voted in the 1914 general election are void, the whole of the state registration scheme is void, for the reasons set forth in *Myers v. Anderson*, and upon the grounds named by Judge COOLEY, to which reference will be made directly.

In *Myers v. Anderson* this Court, having held that one of the standards set up by the Annapolis registration law was void, then considered whether or not the whole of the act would be overthrown. The discussion upon the point is as follows:

"In the *Gunn* case this subject was also passed upon and it was held that albeit the decision of the

question was, in the very nature of things a state one, nevertheless, in the absence of controlling state rulings, it was our duty to pass upon the subject and that in doing so the overthrow of an illegal standard would not give rise to the destruction of a legal one unless such result was compelled by one or both of the following conditions: (a) Where the provision as a whole plainly and expressly established the dependency of the one standard upon the other, and therefore rendered it necessary to conclude that both must disappear as the result of the destruction of either; and (b) where, even although there was no express ground for reaching the conclusion just stated, nevertheless that view might result from an overwhelming implication consequent upon the condition which would be created by holding that the disappearance of the one did not prevent the survival of the other; that is, a condition which would be so unusual, so extreme, so incongruous as to leave no possible ground for the conclusion that the death of the one had not also carried with it the cessation of the life of the other.

"That both of these exceptions here obtain we think is clear."

In Cooley's Constitutional Limitations, Sixth Edition, commencing at page 209, under the caption "Statutes Unconstitutional in Part", the author said:

"It will sometimes be found that an act of the legislature is opposed in some of its provisions to the constitution, while others, standing by themselves, would be unobjectionable. So the forms observed in passing it may be sufficient for some of the purposes sought to be accomplished by it, but insufficient for others. In any such case the portion which conflicts with the constitution, or in regard to which the necessary conditions have not been observed, must be treated as a nullity. Whether the other parts of the statute must also be adjudged void because of the as-

sociation must depend upon a consideration of the object of the law, and in what manner and to what extent the unconstitutional portion affects the remainder. A statute, it has been said, is judicially held to be unconstitutional, because it is not within the scope of legislative authority; it may either propose to accomplish something prohibited by the constitution, or to accomplish some lawful, and even laudable object, by means repugnant to the Constitution of the United States or of the State. A statute may contain some such provisions, and yet the same act, having received the sanction of all branches of the legislature, and being in the form of law, may contain other useful and salutary provisions, not obnoxious to any just constitutional exception. It would be inconsistent with all just principles of constitutional law to adjudge these enactments void because they are associated in the same act, but not connected with or dependent on others which are unconstitutional. Where, therefore, a part of a statute is unconstitutional, that fact does not authorize the courts to declare the remainder void also, unless all the provisions are connected in subject-matter, depending on each other, operating together for the same purpose, or otherwise so connected together in meaning, that it cannot be presumed the legislature would have passed the one without the other. The constitutional and unconstitutional provisions may even be contained in the same section, and yet be perfectly distinct and separable, so that the first may stand though the last fall. The point is not whether they are contained in the same section; for the distribution into sections is purely artificial; *but whether they are essentially and inseparably connected in substance. If, when the unconstitutional portion is stricken out, that which remains complete in itself, and capable of being executed in accordance with the apparent legislative intent, wholly independent of that which was rejected, it must be sustained.* The difficulty is in determining whether the good and bad parts of the statute are cap-

able of being separated within the meaning of this rule. If a statute attempts to accomplish two or more objects, and is void as to one, it may still be in every respect complete and valid as to the other. *But if its purpose is to accomplish a single object only, and some of its provisions are void, the whole must fail unless sufficient remains to effect the object without the aid of the invalid portion. And if they are so mutually connected with and dependent on each other, as conditions, considerations, or compensations for each other, as to warrant the belief that the legislature intended them as a whole, and if all could not be carried into effect the legislature would not pass the residue independently, then if some parts are unconstitutional, all the provisions which are thus dependent, conditioned, or connected must fall with them.*" (Italics ours.)

III.

Regardless of whether or not the registration law of Oklahoma is valid; and if valid, regardless of whether or not it was properly administered, it cannot be held that plaintiff sustained any actionable injury or that he was denied any constitutional right.

First. Let it be assumed solely and only for the purpose of argument that the Registration Statutes of Oklahoma are void: If the Registration Statutes are void, there was no authority for anybody to register the plaintiff at any time. According to plaintiff's own theory, Parks is sued for failure to do that which he had no authority to do. Plaintiff claims damages for want of a registration certificate, whilst contending in fact that if he had such certificate the same would be utterly void.

Second. Take the Oklahoma Registration Law as valid: It is manifest that plaintiff cannot recover for three reasons; namely: (1) Because under the Oklahoma Registra-

tion Law there is no provision by which Parks, as registration officer in 1934, could register the plaintiff, Lane, or any person similarly situated. This will fully appear hereinafter. (2) Because Lane did not apply to the precinct registrar of his precinct in 1916, during the period for general and permanent registration throughout the State, and the plaintiff did not undertake to bring himself within any of the exceptions provided by the Registration Law for registration of then qualified voters at a date, or dates subsequent to the 1916 registration. Plaintiff's own evidence shows this to be true. Lane and his supporting witnesses claimed that in 1916 he applied for registration to one Workman, who was not precinct registrar until 1920. The public records of Wagoner County, Oklahoma, where the plaintiff, Lane, lives, and where the alleged cause of action arose, show that one Pace was the registrar in 1916, rather than Workman. The Circuit Court of Appeals found Lane failed to apply, as he should have done, in 1916, for registration. The evidence upon these points will be discussed later. (3) There is a further insuperable barrier against recovery, because if, in fact, Lane did apply in 1916 for permanent registration, which was the proper time for his application, and was denied registration, he had to appeal from the registrar's adverse decision through the courts, as provided by the Registration Statutes. He did not appeal.

IV.

Plaintiff was required to apply for registration in 1916. Let us here assume, for the sake of argument, that he did in fact, as alleged, make proper application in 1916, and that same was wrongfully denied, and for the purpose of argument only, bar from consideration the rule already discussed under our Proposition I, that a plaintiff cannot in the same proceeding both assert the invalidity of statutes and rely upon them; still the plaintiff cannot recover, because he did not appeal from the wrongful decision, and thereby failed to exhaust his remedies provided by the Registration Statutes. For this additional reason the plaintiff has failed to state or make a case,

Sec. 5654, O. S. 1931, provides for appeal from an adverse holding by a registrar, as follows:

“ * * * and provided further, that wherever any elector is refused registration by any registration officer such action may be reviewed by the District Court of the county by the aggrieved elector by his filing within ten days a petition with the clerk of said court, whereupon summons shall be issued to said registrar requiring him to answer within ten days, and the District Court shall be a expeditious hearing and from his judgment an appeal will lie at the instance of either party to the Supreme Court of the State as in civil cases; * * * ”

It is admitted that plaintiff made no effort to appeal. Plaintiff further admits that prior to his application for registration in 1934 he had been duly advised of this remedy. The plaintiff Lane and others had prosecuted an action in the United States District Court for the Eastern District of Oklahoma before Judge Robert L. Williams, for failure of registration. The plaintiff Lane was then upon the witness stand. The question was under consideration as to

how Lane and others similarly situated could be registered. Judge Williams pointed out to Lane and the other complaining parties there present and participating in the trial that in cases where qualified electors applied to a precinct registrar for registration, and were wrongfully denied, their remedy was by appeal, and Judge Williams at that time read to Lane and the other parties to the action the foregoing statutory provision authorizing appeal (R. 30). It is admitted, therefore, that the failure of the plaintiff to appeal in 1934 was deliberate, with full knowledge of the right of appeal. He undertakes to explain his failure to appeal to the state District Court, saying that he chose to "appeal" by this original action (R. 30).

This precise question was involved in *Trudeau v. Barnes*, 1 Fed. Sup. 453, 65 Fed. (2d) 563 (5th Circuit), 290 U. S. 659, 78 L. ed. 571, and it was there held that a qualified elector cannot sue for damages if he failed to exhaust his statutory remedies by appeal from the adverse ruling of a registration officer. The method of appeal was the same as that here involved. The action for damages, just as in the instant case, was brought under Sec. 1979 of the Revised Statutes (8 U. S. C. A., Sec. 43). An extended statement of the case is found in the decision of the lower court, 1 Fed. Sup. 453. It is there stated by Judge Borah:

"This is an action at law brought pursuant to the provisions of title 8 U. S. C. A., Sec. 43, wherein the plaintiff, Antoine M. Trudeau, a colored man and a member of the Negro race, is seeking to recover damages against Charles S. Barnes, registrar of voters for the parish of Orleans, for alleged deprivation of the civil right to register as a voter in elections.

"The petition is divided into two alternative causes of action, both having as their bases the same alleged state of facts. Pretermittting the arguments of law and conclusions to which the petition is largely

devoted, the pertinent allegations of fact are that on June 18, 1931, Trudeau applied for registration, and was furnished with a registration blank form, and was requested to fill it out in his own writing with his name, place and date of birth, age, ward, residence, and all other data required thereon; that he duly and correctly filled out all the blanks on the said form in his own handwriting, and returned the form to the said Charles S. Barnes, registrar, who then demanded that petitioner read the paragraph from section 1, article 8 of the Constitution of the State of Louisiana containing the understanding clause which is as follows: 'Said applicant shall also be able to read any clause in this Constitution, or the Constitution of the United States, and give a reasonable interpretation thereof'; and that he explain the meaning of the paragraph; that 'petitioner correctly read the said section, and sought to explain its meaning, but the said Charles S. Barnes arbitrarily declared that your petitioner had not perfectly understood and explained the meaning thereof, and refused your petitioner the right to register'."

The plaintiff was denied the right to maintain his action in damages because he had a plain and adequate remedy by appeal. In the course of his opinion the trial judge stated:

"The plaintiff rests his case entirely on two decisions of the United States Supreme Court: *Guinn & Beal v. United States*, 238 U. S. 347, 35 S. Ct. 926, 931, 59 L. ed. 1340, L. R. A. 1916A, 1124; *Myers v. Anderson*, 238 U. S. 368, 35 S. Ct. 932, 935, 59 L. ed. 1349. But he evidently misinterprets these decisions, for they are clearly distinguishable from the case at bar, in that the state laws therein involved were openly and on their face discriminatory, and were held to be unconstitutional, not on account of their provisions as to educational qualifications, but on account of the presence therein of so-called 'grandfather clauses':

that is, clauses which make the right to vote dependent on conditions existing at a date prior to the adoption of the Fifteenth Amendment." (Italics ours.)

The decision then makes the point that the ruling of the precinct registrar was "subject to control by review", and that plaintiff could not be heard to complain in an action for damages, on account of his failure to appeal.

Upon appeal to the Fifth Circuit, 65 Fed. (2d) 563, it was held that one denied registration as a voter, before suing for damages under federal statute, must exhaust the remedy afforded by the state law. Referring to provision for appeal, the Circuit Court said:

"The same article in section 5 provides that any person possessing the qualifications for voting who may be denied registration shall have the right to apply for relief to the District Court for the parish in which he offers to register; that the court shall then try the cause, giving it preference over all other cases, before a jury whose verdict shall be final, except that the complaining party is given the right of appeal to the appropriate appellate court."

In its application of the state law authorizing appeal, and in denying the claim of plaintiff for damages, the Circuit Court announced the familiar rule that one cannot sue for damages without first having fully exhausted the remedies provided by law, saying.

"The Louisiana Constitution protects every citizen who desires to register from being arbitrarily denied that right by the registrar of voters by giving the applicant a right to apply without delay and without expense to himself to the trial court for relief, to submit his qualifications to vote to a jury, and to have them finally passed upon by an appellate court. It is idle to say that the defendant as registrar had the arbitrary power to deny plaintiff the right to vote.

We cannot say, and refuse to assume, that, if the plaintiff had pursued the administrative remedy that was open to him, he would not have received any relief to which he was entitled. *At any rate, before going into court to sue for damages he was bound to exhaust the remedy afforded him by the Louisiana Constitution. First National Bank of Greeley, Colo. v. Weld County*, 264 U. S. 450, 44 S. Ct. 385, 68 L. ed. 784; *First National Bank v. Gildart* (C. C. A.), 64 F. (2d) 873, Fifth Circuit, decided April 22, 1933." (Italics ours.)

Trudeau applied to this Court for review of his case. On November 6, 1933, certiorari was denied. 290 U. S. 659, 78 L. ed. 571.

This appears to be the only federal case reported involving this question with respect to the effect of failure to appeal from the decision of a registrar. An examination of the cases cited *supra* by the Circuit Court shows that the general rule applied in cases of failure to exhaust one's statutory remedies by appeal governs in election matters.

In *First Nat. Bank v. Board of Commrs.*, 264 U. S. 450, 68 L. ed. 784, the first case cited *supra* as supporting the rule announced in *Trudeau v. Barnes*, a taxpayer had failed to exhaust the remedies provided for appeal. With respect to such situation this Court said:

"We are met at the threshold of our consideration of the case with the contention that the plaintiff did not exhaust its remedies before the administrative boards, and consequently cannot be heard by a judicial tribunal to assert the invalidity of the tax. We are of opinion that this contention must be upheld."

Then this Court referred to a Colorado decision, in which state the action arose, saying:

"The Supreme Court of Colorado, in a suit brought by this plaintiff against the county assessor, involving the same tax for 1913, and presenting the same questions here involved, sustained the refusal of a lower court to enjoin the collection of the tax, and held: * * * and (d), 'with full knowledge of the respective powers of these several boards to make corrections in assessments and adjustments in equalization, essential to bring about a complete and equitable assessment of all property within the state, it remained inactive until long after the tax was laid, when it applied for an abatement or rebate of the tax. The aforesaid tribunals were open to plaintiff in error prior to the laying of the tax, but it refrained from seeking relief therein, and may not now complain.' *First Nat. Bank v. Patterson*, 65 Colo. 166, 172, 173, 176 Pac. 498.

"The effect of this is, to hold that an administrative remedy was in fact open to plaintiff under the statutes of the state, and by this construction, upon well-settled principles, we are bound. *McGregor v. Hogan*, decided November 12, 1923, 263 U. S. 234, ante, 282, 44 Sup. Ct. Rep. 50; *Farncomb v. Denver*, 252 U. S. 7, 10, 64 L. ed. 424, 426, 40 Sup. Ct. Rep. 271; *Londoner v. Denver*, 210 U. S. 373, 374, 52 L. ed. 1103, 1107, 28 Sup. Ct. Rep. 708; *Price v. Illinois*, 238 U. S. 446, 451, 59 L. ed. 1400, 1404, 35 Sup. Ct. Rep. 892; *Western U. Teleg. Co. v. Missouri*, 190 U. S. 412, 425, 47 L. ed. 1116, 1121, 23 Sup. Ct. 730.

"we cannot assume that, if application had been made to the commission proper relief would not have been accorded by that body, in view of its statutory authority to receive complaints and examine into all cases where it is alleged that property has been fraudulently, improperly, or unfairly assessed. *Collins v. Keokuk*, 118 Iowa 30, 35, 91 N. W. 791. Nor will plaintiff be heard to say that there was not adequate time for a hearing, in the absence of any effort on its part to obtain one. * * * And, accepting the decision of the

state court that such remedies were, in fact, open and available under the Colorado statutes, it could not be dispensed with. *McGregor v. Hogan*, *supra*; *Farncomb v. Denver*, 252 U. S. 11, 64 L. ed. 426, 40 Sup. Ct. Rep. 271; *Stanley v. Albany County*, 121 U. S. 535, 30 L. ed. 1000, 7 Sup. Ct. Rep. 1234; *Petoskey Gas Co. v. Petosky*, 162 Mich. 447, 452, 127 N. W. 345; *Caledonia Twp. v. Rose*, 94 Mich. 216, 218, 53 N. W. 927; *Hinds v. Belvidere Twp.*, 107 Mich. 664, 667, 65 N. W. 544; *Ward v. Alsup*, 100 Tenn. 619, 746, 46 S. W. 573.

"Plaintiff not having availed itself of the administrative remedies afforded by the statutes, as construed by the state court, *it results that the question whether the tax is vulnerable to the challenge in respect of its validity upon any or all of the grounds set forth, is one which we are not called upon to consider.*" (Italics ours.)

The consideration given to the Colorado case in one of the excerpts set forth above invites attention to authoritative statements in Oklahoma with respect to the Oklahoma law authorizing appeal from adverse decisions of registration officers.

In *Determan v. State*, 89 Okl. 242, 244, it was said:

"In that event, if registration is refused on any ground, the whole of section 6252, providing the general regulations for registering, including the provision providing for appeal, is the governing section."

On April 1, 1922, the Attorney General of the State in a written opinion held, in accordance with the well established practice in Oklahoma:

"If registrar wrongfully, arbitrarily or capriciously refuses to issue a registration certificate to an elector, qualified under the law to receive it, the elector is given his remedy by an appeal to the District Court of the county in which he resides."

This opinion of the Attorney General is found in the book-
et printed by the authority of the State Election Board in
1932, at page 9.

The rule requiring one to exhaust his available stat-
utory remedies before resort to court action appears to be
uniform and applicable to all sorts of cases.

At the first trial Judge Williams directed a verdict in
favor of the defendants, relying upon *Trudeau v. Barnes*,
and other authorities to the same effect. A new trial was
granted because plaintiff claimed that Judge Williams was
disqualified, and he reached the conclusion that in view of
his challenge he should not enter judgment against plain-
tiff. Judge Murrah likewise directed a verdict in favor
of the defendants, as shown by his opinion, relying prin-
cipally upon the doctrine in *Trudeau v. Barnes* and in the
cases there cited.

Commencing at page 48 of petitioner's brief, he seeks
to distinguish and escape the application of the *Trudeau-
Barnes* case, *supra*, and the cases therein cited, by placing
the present case in the same class as the *Guinn* and *Myers-
Anderson* cases. But this case cannot be so classified, be-
cause, as has been pointed out, the *Guinn* and *Myers-An-
derson* cases involve provisions which were void and dis-
criminatory on their faces, whereas the Oklahoma Registra-
tion Law of 1916 is not void or discriminatory on its face,
nor has petitioner ever so contended. And as is hereinafter
shown, said law of 1916 does not embody the objectionable
"Grandfather Clause" found in the *Guinn* case. It is only
in cases where the law involved is void and discriminatory
on its face, that the person complaining thereof is excused
from seeking remedy by the appeal provided. *Trudeau v.
Barnes*, *supra*, and cases therein cited.

Bearing in mind the fact that plaintiff's action is upon

the ground that he was not registered, it is definitely certain that he cannot recover, having failed to appeal and thereby comply with the statutory provisions which provide a ready and ample method for review in any case where registration is wrongfully denied.

V.

The defendant registrar Parks had no authority to register the plaintiff in 1934. The statutes (Sec. 5654) limited his authority to register (1) those who subsequent to the next prior registration period had become qualified to vote in the precinct, and (2) those qualified electors who therefore had not been registered because of absence, sickness, or other unavoidable misfortune. Plaintiff Lane does not claim to belong to either of these classes. For this further and additional reason plaintiff has failed to state or make a case.

A careful examination of the statutes, particularly said Sec. 5654, will disclose that there was no provision whatever authorizing or directing the registrar Parks to register any applicants other than those who belonged to one of the two classes above mentioned. The first and only registration laws ever enacted in Oklahoma are those under attack. The scheme, in brief, was this: All qualified electors of each precinct had to be registered between the 30th day of April, 1916, and the 11th day of May, 1916, unless prevented by absence, sickness, or unavoidable misfortune. If so prevented, electors were given the right to be registered at the next registration period. Provision was made for opening the registration books for further registration at fixed periods from time to time prior to each general election. There is not so much as a word in the law showing or tending to show that the defendant Parks had

any authority whatsoever to register Lane in 1934, the date of his alleged denial of the right of registration. There was no duty upon the part of Parks, in this absence of statutory authority, to register Lane. In fact section 5654 contains a positive inhibition against registration in 1934 of one in Lane's situation. This point alone seems conclusive of the whole matter in favor of the defendants.

VI.

It conclusively appears that in fact plaintiff Lane never applied for registration to the 1916 precinct registrar. It was so held by the Circuit Court of Appeals (R. 100). There is no proof that the 1916 registrar in the precinct where plaintiff lived ever refused registration of any colored voter who applied to him. There is no evidence that any colored voter in Wagoner County was ever wrongfully denied registration, upon proper application.

The 1916 registration of the voters throughout the state was the first made. By reference to the statutes it will be observed that the plan was to make a *permanent* registration of all qualified voters. The law, applicable to all persons alike, does not provide for subsequent registration of the then qualified voters, except those who could not register in 1916 on account of absence, sickness, or other unavoidable misfortune.

For some reason not appearing in the record Lane failed to apply in 1916 for registration upon the permanent list of voters. It is true he says he applied in 1916 and at all registration periods subsequent thereto. But his own story is that in 1916 he applied to Workman, who was not registrar until 1920. In 1916 the registrar in plaintiff's precinct where he was required to register was James L. Pace, and no other person. Pace had the records and

performed his duties as registrar throughout both of the 1916 registration periods which came before the primary and general elections of that year. The evidence upon this point (R. 28-52) follows:

Lane testified that he applied for registration in 1916 to a man named Workman (R. 28) and, over defendant's objection and exception made upon the ground that the question did not call for the best evidence, testified that Workman was the 1916 precinct registrar. There was no documentary evidence available from the public records of the county as to who was in fact the 1916 registrar in the precinct, except the registration record of the county, page 71 of which was introduced in evidence by plaintiff (R. 34) and it was there found that said public registration record contained the names of all the precinct electors registered in 1916, which list was made in the proper registration periods of 1916, and by Pace, rather than Workman (R. 34, *et seq.*).

In the absence of an available public record of the county showing the appointment of the precinct registrar for 1916, there was introduced the Wagoner County Democrat, a newspaper published at Wagoner, the county seat of Wagoner County, the same being the issue of April 27, 1916, wherein appeared a list of the precinct registration officers under appointment made by the county registrar. This published list shows that Pace was the 1916 registrar in Gatesville Precinct #1, where the plaintiff lived and was required to register (R. 45). Various original registration certificates in the hands of voters of the precinct were introduced, all issued by Pace (R. 40, *et seq.*). Surely it requires no argument to show that documentary evidence made at the time, particularly the public record of the county made by proper authority, is the best evidence to prove who was the 1916 precinct registrar.

Pace, the 1916 registrar, testified, identifying the authoritative and public registration lists made by himself for both of the registration periods in 1916, selecting names of voters whom he recalled registering in both of the registration periods for that year, and further testifying that he served for those periods.

Plaintiff Lane admitted that he did not apply to Pace for registration. Thus it affirmatively appears from plaintiff's own admissions, from the county's public records of the voters registered in 1916, and from all the available documentary evidence made at the very time of the registration, that Workman, to whom Lane says he went for registration, was not the registrar for that year. It does appear, however, that Workman was the registrar in that precinct in 1920.

There is not the slightest evidence that the 1916 registrar ever refused registration to any elector whomsoever, whether white or colored. As to the alleged wrongful refusal to register negroes throughout the county, it should be noted that there is no evidence that at any time in Wagoner County any proper application for registration of a qualified colored voter was refused. It is not for us to seek the reason why the great body of colored electors in the county did not apply for registration in 1916. The emotional appeals in petitioner's brief describing the alleged wrongs upon colored persons throughout the county are without basis in fact appearing in the record. Perhaps there are intimations in the record as to the reason why so many negroes entitled to registration in Wagoner County failed of registration. If required to say how this condition was brought about, we would have to assume that wrong advice was given to the great majority of the colored people of Wagoner County, to the effect that they should ignore the provisions of the registration laws, upon

the theory that they are void, as here contended by plaintiff.

It has been already pointed out that Lane himself declined to take good advice when given by high authority. In this connection it should be borne in mind that whilst the plaintiff Lane was on the witness stand before Judge Williams, the then United States Judge for the Eastern District of Oklahoma, in an action involving Lane's failure and that of others to be registered, Judge Williams himself pointed out to Lane the statutory requirement for appeal in case of refusal by a registration officer to register an applicant; that thereafter Lane appeared before Parks, the principal defendant here, and having been denied registration, instituted this original action, wholly disregarding the advice which he had received from a Federal judge. If that sort of spirit has prevailed among the colored people of Wagoner County, we have an explanation of the fact that not many colored persons in Wagoner County are registered.

VII.

There was no proof of conspiracy upon the part of the defendants or any of them, to deny negroes the right of registration. The Circuit Court of Appeals so held (R. 100).

The gist of the testimony of plaintiff's witnesses is to the effect that Parks declined to register Lane, giving as the reason that he had been advised by the "higher ups", the defendants Moss and Wilson, not to register colored people.

As to the defendant Moss: There was only pure hearsay, to which the defendants objected and excepted, tending to connect Moss with this statement alleged to have been made by Parks. If Parks did make the statement that he was instructed by Moss not to register colored people, it is not binding upon Moss, no other evidence appearing to connect Moss with the alleged wrongdoing of Parks.

As to the defendant Wilson: He is in the same situation as the defendant Moss, and for the same reason there is nothing of record so connecting him with Parks as to justify the charge of conspiracy.

We are therefore brought to consider Parks alone, who followed, in the case of Lane, the plain provisions of the applicable statutes denying Lane registration because he did not belong to any one of the classes whom Parks was authorized to register at that time. There is no evidence that in 1934 any white person in the state was ever registered in similar circumstances. Those who failed to have their names placed upon the permanent registration lists of 1916, whether white or colored, have been treated alike, so far as the record shows.

VIII.

The Oklahoma Registration Statutes do not violate any of the constitutional provisions invoked by plaintiff. They cannot be overthrown by any or all the applicable rules for interpretation.

No resort can be had to administrative results or other extraneous matters, for the statutes are not ambiguous or of doubtful meaning.

The challenge for alleged discrimination is not sustainable. The sole test of the constitutionality of the alleged discriminatory provisions is this: Were those who did not vote in 1914 subjected in 1916 to the same standard of qualification as to the right to vote, as those who had voted in 1914?

- (a) *Statutes which are clear and unambiguous, as in the instant case, when challenged upon constitutional grounds, must be tested from the statutory provisions themselves, unaided by extraneous facts with respect to the manner in which they have been administered. Such extraneous matters are resorted to for the sole purpose of determining the intent of the Legislature, where the intent is left doubtful upon the face of the statutes. Petitioner's contention that the Oklahoma Registration Statutes violate constitutional provisions because the evidence here shows that actual administration under the statutes achieved a result contrary to constitutional provisions, is not supported by authorities cited upon the point. These cases are here examined and distinguished.*

The true rule upon this point is stated in Cooley's Constitutional Limitations, 6th Ed., at pages 79-80, thus:

"The considerations thus far suggested are such as have no regard to extrinsic circumstances, but are those by the aid of which we seek to arrive at the meaning of the constitution from an examination of

the words employed. *It is possible, however, that after we shall have made use of all the lights which the instrument itself affords, there may still be doubts to clear up and ambiguities to explain. Then, and only then, are we warranted in seeking elsewhere for aid. We are not to import difficulties into a constitution, by a consideration of extrinsic facts, when none appear upon its face. If, however, a difficulty really exists, which an examination of every part of the instrument does not enable us to remove, there are certain extrinsic aids which may be resorted to, and which are more or less satisfactory in the light they afford.* (Italics ours.)

And at pages 84-85:

"Where, however, no ambiguity or doubt appears in the law, we think the same rule obtains here as in other cases, that the court should confine its attention to the law, and not allow extrinsic circumstances to introduce a difficulty where the language is plain. To allow force to a practical construction in such a case would be to suffer manifest perversions to defeat the evident purpose of the lawmakers. 'Contemporary construction' . . . can never abrogate the text; it can never fritter away its obvious sense; it can never narrow down its true limitations; it can never enlarge its natural boundaries." While we conceive this to be the true and only safe rule, we shall be obliged to confess that some of the cases appear, on first reading, not to have observed these limitations." (Italics ours.)

The author then refers to authority which appears upon first reading to announce a contrary rule, and then, with respect to this *apparent contra*, states at page 85:

"It is believed, however, that in each of these cases an examination of the Constitution left in the minds of the judges sufficient doubt upon the question of its violation to warrant their looking elsewhere for aids in interpretation, and that the cases are not in

conflict with the general rule as above laid down."
(Italics ours.)

In *Moore v. Otis* (8th Cir.), 275 Fed. 747, the rule for which we contend was announced thus:

"In this connection it is proper to say that the constitutional validity of a law has to be tested not by what has been done under it but what may by its authority be done. *Montana Co. v. St. Louis, etc. Co.*, 152 U. S. 170, 14 Sup. Ct. 506, 38 L. ed. 398. One public official may construe the law a certain way and another in a different way, *but the courts only look to what may be done by any public official under a fair construction of the law.*" (Italics ours.)

In *Montana Co. v. St. Louis Mining Co.*, 152 U. S. 160, 38 L. ed. 398, this Court put this question at rest by expressly approving a New York case, from which this Court copied and approved this statement of the rule: "The constitutional validity of law is to be tested, not by what has been done under it, but by what may by its authority, be done", saying, however, as was said by the Eighth Circuit, quoted *supra*, that the courts will look only to what may be done by the public officials under a fair construction of the law.

In *Grainger v. Douglas* (Sixth Circuit), 148 Fed. 513, this question was under consideration. The judges of the Sixth Circuit considered the *Yick Wo* case from California, which is relied upon by plaintiff here, and held:

"It is to be noted in this connection that the question whether said act confers arbitrary power is not to be determined by the fact that the power conferred may have been exercised arbitrarily as to the appellee. If such is the case, possibly it may have some bearing on the interpretation of the power conferred. In the *Yick Wo* case Mr. Justice MATTHEWS seems to

intimate that the arbitrary action of the board of supervisors complained of therein did have an interpreting effect on the nature of the power conferred. *But we think Judge Sawyer struck a true note, in the case of Ex parte Christensen (C. C.) 43 Fed. 243, 247, when he said:*

'The validity of an ordinance must be determined by its terms, by what it authorizes, not by the manner of its execution. It is valid or invalid, irrespective of the manner in which it is in fact administered. Its capability of being abused is the test.'" (Italics ours.)

In *State v. Hall* (Wis.), 190 N. W. 457, is found one of the most enlightening of the many state cases in point. The Supreme Court, in arguing against resort to extraneous matters where a statute plain within its own terms is to be construed, said:

"Were that so, then a law would be constitutional one day and the next it would be unconstitutional, because of the happening of an independent event. The constitutionality of laws does not depend upon such fortuitous circumstances. It is a well-established principle of law that the constitutionality of an act cannot be tested by the evidence in the particular case. *State v. Emery* (Wis.), 189 N. W. 571; *St. Louis v. Liessing*, 190 Mo. 464, 89 S. W. 611, 1 L. R. A. (N. S.) 918, 109 Am. St. Rep. 774, 4 Ann. Cas. 112. In the latter case the court says:

'The constitutionality of the law is not to be determined upon a question of fact in each case, but the courts determine for themselves upon the fundamental principles of our Constitution that the act of the legislature or municipal assembly is not to be declared void unless the violation of the Constitution is so manifest as to leave no room for reasonable doubt.'

"This in the nature of things must be so, else a law would be constitutional under the facts found in one case and unconstitutional under the facts found in another, or it would be valid today, but void tomorrow, because of the happening of an extraneous event. If such a view should obtain, the statute in question has been constitutional since its enactment in 1909, and until the Democrats in 1922 failed to poll a 10 per cent. vote at the primary, when it became unconstitutional. Such a test of constitutionality is unthinkable. That in the course of time oft-repeated experience may modify the judicial view as to constitutionality of laws is apparent; but it should not and cannot be changed because of a few isolated instances. Besides, one may well query the utility or necessity of a law whose violation is not contemplated." (Italics ours.)

The petitioner's contention, if sustained, would lead to the inextricable difficulties above stated. Wagoner County has only a very small part of the state's population. It is only one of seventy-seven counties of the state. There is not so much as an effort to show that any wrongs were inflicted by the registration officers throughout the state in the other seventy-six counties. The instances complained about in Wagoner County, if true, are so *isolated* and comparatively unimportant, when the vast population as a whole is considered, that the court cannot determine, even if it were material for consideration here, the general practice under the registration law throughout the state, although there is evidence in the record tending to show that large numbers of negroes were registered elsewhere (R. 48). We take it that the court will assume that no abuses existed in the other parts of the state. Assuming for argument that there were abuses in Wagoner County, they are without weight here.

Under another head, where we discuss the facts particularly, we undertake to show that the registration statutes were applied without distinction between the whites and the colored people of Wagoner County, and that in no instance was a qualified elector who complied with the registration laws, denied the right of registration.

In *State v. Layton* (Mo.), 61 S. W. 171, 177, the Supreme Court said:

"The constitutionality of the law is not to be determined upon the question of fact in each case, but the courts determine for themselves upon the fundamental principles of our constitution, which vests the legislative power in the general assembly. * * *"

Many other decisions are to the same effect.

We now undertake to distinguish the cases claimed in petitioner's brief as support for the contention that the actual administrative results show that the registration law of Oklahoma is unconstitutional and void. The cases relied upon by plaintiff fall within two classes. *First*, those cases involving statutes doubtful or ambiguous in their terms, and *second*, those where the complaining parties had been deprived of their constitutional rights while administrative officers were acting without any statutory authority. Cooley, in his *Constitutional Limitations*, 6th Edition, commencing at page 84 in the excerpts quoted above, admits that there are at least some cases which apparently sustain plaintiff's theory upon this point. But he proceeds to show that this apparent support is what one might think he had found "on first reading". Having considered these "first reading" appearances of departure from the rule which he announces, he adheres to and firmly announces, without qualification, the doctrine that where no ambiguity or doubt appears in the law—in its own terms—no resort

can be had, for the purposes of construction, to administrative results. And this great authority, having fully considered the case, summarizes as above holding:

“these cases are not in conflict with the general rule as above laid down.”

We come now to examine the case of *Yick Wo v. Hopkins*, 118 U. S. 356, 30 L. ed. 220, upon which petitioner really relies for his contention that the court may here look to administrative results in construing the registration laws of the state. This is the one outstanding case calculated to mislead a casual observer upon first reading of the opinion. No doubt the *Yick Wo* case contains some language of the sort to which Cooley referred in the above excerpts—language which might easily lead one to a misconception upon first consideration or “on first reading”. No court however great, no judge however learned, is entirely free, at least upon occasion, from the use of language which may lead to a misconception of the intent of the court or judge in an opinion.

The learned judge who wrote the opinion in *Grainger v. Douglas*, 148 Fed. 513, *supra*, whilst announcing that “the constitutionality of a statute must be determined by its provisions and not by the manner in which it is in fact administered”, considered the *Yick Wo* case carefully and undertook to place the language in the *Yick Wo* case, upon which plaintiff relies, beyond the misconception under which petitioner’s brief writer seems to labor, notwithstanding ample opportunity to avoid the misconception. For the purpose, primarily no doubt, of showing that there is nothing in the *Yick Wo* case contrary to the doctrine in the *Grainger* case, it was said:

“It is to be noted in this connection that the question whether said act confers arbitrary power is not

to be determined by the fact that the power conferred may have been exercised arbitrarily as to the appellee. If such is the case, possibly it may have some bearing on the interpretation of the power conferred. In the *Yick Wo* case Mr. Justice MATTHEWS seems to intimate that the arbitrary action of the board of supervisors complained of therein did have an interpreting effect on the nature of the power conferred. *But we think Judge Sawyer struck a true note*, in the case of *Ex parte Christensen* (C. C.) 43 Fed. 243, 247, when he said:

'The validity of an ordinance must be determined by its terms, by what it authorizes, not by the manner of its execution. It is valid or invalid, irrespective of the manner in which it is in fact administered. Its capability of being abused is the test.'

Careful study of the *Yick Wo* and other cases cited by plaintiff must lead to the conclusion announced by Judge COOLEY that these cases, all and singular, are those where there was such *doubt or ambiguity in the provisions of the statutes* as to justify resort to extraneous matters, including administrative results, which resort, when had, is only for the purpose of determining the legislative intent, for when that intent appears sufficiently clear, the courts determine the question as to whether or not a given statute is constitutional.

Under petitioner's proposition that the court may look to administrative results for interpretation of the statutes, only two cases other than *Yick Wo v. Hopkins* are cited. Both of them wholly fail to support petitioner's contention. *Henderson v. Mayor of New York*, 92 U. S. 259, 23 L. ed. 543, did not involve this point. It was there held that the provisions of the statute in question were void upon the face of the statute and upon their own terms. The state legislature had undertaken to regulate commerce with foreign

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nations. The third case cited is *Minnesota v. Barber*, 136 U. S. 313, 34 L. ed. 455. That case does not present the point under discussion. The Minnesota statute was there held to be void because by its terms, which were free from ambiguity or doubt, the State of Minnesota undertook to regulate and hinder interstate commerce.

Finally, upon this point we quote Black on Interpretation of Laws, under the head of "Admissibility of Extrinsic Aids", pages 196-197, as follows:

"In the interpretation of a statute, if a doubt or uncertainty as to the meaning of the legislature cannot be removed by a consideration of the act itself and its various parts, recourse may be had to extraneous facts, circumstances, and means of explanation, for the purpose of determining the legislative intent; but those only are admissible which are logically connected with the act in question, or authentic, or inherently entitled to respectful consideration.

"When Resort may be had to Extrinsic Aids."

"The cardinal rule of all statutory construction is that the meaning and intention of the legislature are to be sought for. This meaning and intention are to be sought first of all in the statute itself.—in the words which the legislature has chosen to express its purpose. If these words convey a definite, clear, and sensible meaning, that must be accepted as the meaning of the legislature, and it is not permissible to vary it or depart from it by reason of any considerations found outside the statute or based on mere conjecture. In such case, there is no room for construction. But if the words of the law are not intelligible, if there arises a substantial doubt as to their meaning or application, or if there is ambiguity on the face of the statute, then the endeavor must be made to ascertain the true meaning and intent of the legislature. And to this end, first of all, the intrinsic aids for the interpretation of the statute are to be resorted to. It should be read and con-

strued as a whole; its various parts should be compared; each doubtful word or phrase is to be read in the light of the context; the interpretation clause, if there is any, should be examined to see if it defines or explains the ambiguous part; and light may be sought from the title of the act, the preamble, and even the headings of the chapters and sections.

"But if these intrinsic aids are exhausted without success, if there still remains a substantial doubt or ambiguity then recourse may be had to extraneous facts, considerations and means of explanation, always with the same object, to find out the real meaning of the legislature." (Italics ours.)

- (b) *The challenge of a statute on the ground of unconstitutionality is not sustainable, unless the case is so clear as to be free of reasonable doubt.*

In Cooley's Constitutional Limitations, 6th Edition, at pages 216-217, under the head "Judicial Doubts on Constitutional Questions", the text is this:

"It has been said by an eminent jurist, that when courts are called upon to pronounce the invalidity of an act of legislation, passed with all the forms and ceremonies requisite to give it the force of law, they will approach the question with great caution, examine it in every possible aspect, and ponder upon it as long as deliberation and patient attention can throw any new light upon the subject, and never declare a statute void, *unless the nullity and invalidity of the act are placed, in their judgment, beyond reasonable doubt. A reasonable doubt must be solved in favor of the legislative action, and the act be sustained.*

"The question whether a law be void for its repugnancy to the constitution is at all times a question of much delicacy, which ought seldom, if ever, to be decided in the affirmative in a doubtful case. The court, when impelled by duty to render such a judg-

ment would be unworthy of its station could it be unmindful of the solemn obligation which that station imposes; but it is not on slight implication and vague conjecture that the legislature is to be pronounced to have transcended its powers, and its acts to be considered as void. The opposition between the constitution and the law should be such that the judge feels a clear and strong conviction of their incompatibility with each other.' Mr. Justice WASHINGTON gives a reason for this rule, which has been repeatedly recognized in other cases which we have cited. After expressing the opinion that the particular question there presented, and which regarded the constitutionality of a State law, was involved in difficulty and doubt, he says: 'But if I could rest my opinion in favor of the constitutionality of the law on which the question arises, on no other ground than this doubt so felt and acknowledged, that alone would, in my estimation, be a satisfactory vindication of it. It is but a decent respect due to the wisdom, the integrity, and the patriotism of the legislative body by which any law is passed, *to presume in favor of its validity, until its violation of the constitution is proved beyond all reasonable doubt.*'" (Italics ours.)

The applicable text in Black on Interpretation of Laws, pp. 93-94, is to the same effect, and as follows:

"Every act of the legislature is presumed to be valid and constitutional until the contrary is shown. All doubts are resolved in favor of the validity of the act. If it is fairly and reasonably open to more than one construction, that construction will be adopted which will reconcile the statute with the constitution and avoid the consequence of unconstitutionality.

"Legislators, as well as judges, are bound to obey and support the constitution, and it is to be understood that they have weighed the constitutional validity of every act they pass. Hence the presumption is always

in favor of the constitutionality of a statute; every reasonable doubt must be resolved in favor of the statute, not against; and the courts will not adjudge it invalid unless its violation of the constitution is, in their judgment, clear, complete, and unmistakable. Hence it follows that the courts will not so construe the law as to make it conflict with the constitution, but will rather put such an interpretation upon it as will avoid conflict with the constitution and give it full force and effect, if this can be done without extravagance. If there is doubt or uncertainty as to the meaning of the legislature, if the words or provisions of the statute are obscure, or if the enactment is fairly susceptible of two or more constructions, that interpretation will be adopted which will avoid the effect of unconstitutionality, even though it may be necessary, for this purpose, to disregard the more usual or apparent import of the language employed. 'It is the duty of the court to uphold a statute when the conflict between it and the constitution is not clear; that the implication which must always exist, that no violation has been intended by the legislature, may require the court, in some cases, where the meaning of the constitution is in doubt, to lean in favor of such a construction of the statute as might not at first view seem most obvious and natural. Where the meaning of the constitution is clear, the court, if possible, must give the statute such a construction as will enable it to have effect.' 'If, upon the construction we have been considering, the law in question would be void, or even of doubtful validity, it is our duty to find, if we are able, some other construction that will relieve it of this difficulty. If a law can be upheld by a reasonable construction, it ought to be done, and it is to be presumed that the legislature, in passing it, intended to enact a reasonable and just law, rather than an unreasonable and unjust one.'"

The reported cases upon this point are too numerous and too well known to require citation.

- (c) *Where a statute has long acquiesced in by the public and treated as valid by various governmental departments, ordinary presumption of constitutionality is greatly strengthened.*

—*City of Tulsa v. Southwestern Bell Telephone Co.*, 75 Fed. (2d) 343, 351. See citation supporting this rule under note 9 at said page 351.

- (d) *The test of a registration statute alleged to be discriminatory is this: Does the statute set up for one class of electors a different or additional standard of qualifications to vote, from that required of other electors? The "Grandfather Clause" having been held unconstitutional, was not applied in 1916. Plaintiff Lane and others, similarly circumstanced were only required in 1916 to meet the same tests already met by the 1914 voters. A plaintiff cannot successfully complain on account of an illegal standard to which he was never subjected. There was no discrimination. The Circuit Court of Appeals held that there was no discrimination (100-101). The requirement for mandatory registration of those who had voted in 1914, and whose names were on the 1914 lists of voters, was for convenience. There was uniformity in basis of qualification for registration.*

The first Oklahoma Legislature enacted general election laws for the state, the same being Chapter 31, Session Laws of Oklahoma 1907-1908. Provision was made for the registration of electors in cities of the first class only. Precinct election boards were provided for, consisting of an inspector, who was made chairman of the board, a judge, and a clerk, their respective duties were prescribed. One of the duties of the precinct board was to pass upon the qualifications of the unregistered voters. This duty was imposed primarily upon the inspector. An elaborate system was set up for challenging applicants to vote for lack of qualifications under the Constitution and laws of the state, and for their

examination with respect to qualifications. Though the statute has been amended upon some points, the duties of the precinct boards have remained substantially the same and now exist in substance as originally enacted. If Lane presented himself to a registrar in 1916, not being a resident of a city of the first class where registration had been made already, *he had to answer, satisfactorily, exactly the same questions which the 1914 voters answered to the satisfaction of the precinct board.* If it be assumed (we contend it cannot be so assumed) that the precinct board would have violated the Constitution by denying Lane the right to vote in 1914 if he had tried to vote, this assumption does not improve his position, for the manifest reason that in 1916 all he had to do for registration was to show he possessed the same qualifications as the 1914 voters. *He complains because of the illegal standard in the "Grandfather Clause" to which he never was subjected. We do not find any authority holding that an elector may complain of an illegal standard never applied to him, to his injury.*

The provision requiring that the registration officers place on the lists the names of all qualified electors who had voted in 1914, is not discriminatory. It is not unfair or unreasonable in any respect. The purpose of the requirement is plain and unobjectionable. The sole purpose of registration is to determine in advance of an election the persons who are qualified to vote, rather than to await the day for voting and there delay the election by inquiry as to qualifications. At the 1914 general election throughout the state all those who voted *had been examined by the election officials at the polls*, as required by the Oklahoma statutes. They were then and there properly adjudged to be legal voters. Hence there was no necessity whatever for another examination as to their qualifications.

Throughout his brief petitioner continuously refers to the 1916 Registration Law as a revitalization and continuance of the "Grandfather Clause". This is not true.

Section 1 of Article III of the Oklahoma Constitution was in full force and effect at the time of the election in 1914. Said provision is as follows:

"The qualified electors of this State shall be citizens of the United States, citizens of the State, including persons of Indian descent (native of the United States), who are over the age of twenty-one years, and who have resided in the State one year, in the County six months, and in the election precinct thirty days, next preceding the election at which such elector offers to vote. Provided, that no person adjudged guilty of a felony, subject to such exceptions as the Legislature may prescribe; nor any person, kept in a poorhouse at public expense, except Federal, Confederate and Spanish-American ex-soldiers or sailors, nor any person in a public prison, nor any idiot or lunatic, shall be entitled to register and vote."

The "Grandfather Clause", is as follows:

"No person shall be registered as an elector of this State, or be allowed to vote in any election held herein unless he be able to read and write any section of the Constitution of the State of Oklahoma; but no person who was, on January 1st, 1866, or at any time prior thereto, entitled to vote under any form of government, or who at that time resided in some foreign nation, and no lineal descendent of such person, shall be denied the right to register and vote because of his inability to so read and write sections of such Constitution."

If the so-called "Grandfather Clause", was in fact enforced strictly in any given precinct of the State in 1914, the result as regards registration was this: Each appli-

cant had to meet not only the requirements of Section 1, Article III of the Constitution, *supra*, but also the provisions of the "Grandfather Clause", *supra*. In 1916, after the "Grandfather Clause" was stricken down by this Court, applicants for registration had to meet only the requirements of said Section 1, Article III of the Oklahoma Constitution. And it will be noted that the applicants for registration in 1916 were not required to meet any test in addition to the standard for 1914 already met by all the 1914 voters, *every one of whom was required to meet the test, just as provided in Section 1, Article III*. Thus, it will be seen that those who voted in 1914 were already examined and found to be qualified, and listed as such, all in accordance with said Section 1, Article III, and it will be further observed that every qualified elector of the State theretofore unregistered, whether white or colored, without any discrimination whatsoever, was required, if he desired to vote, to register in 1916, unless prevented by absence, sickness or unavoidable misfortune, and meet, upon making his application, precisely the same test (Sec. 1, Art. III, *supra*) as that successfully met by the 1914 voters. Thus the petitioner complains about ancient history.

Cooley on Constitutional Limitations, 6th Edition, at page 756, says that the purpose of registration prior to an election is to enable the election officers at the polls to avoid the haste and confusion that must attend the determination upon election day of the various and difficult questions concerning the right of individuals to exercise the franchise, and that by registration electors are notified in advance what persons have the right to vote. Nothing worth while could have been accomplished by requiring those who had been examined and *tested* in 1914, and who had shown themselves to be qualified, to go through the same proceeding again. The state authorities had the 1914 lists of the

electors. It was fair to all concerned, and business-like, and saved a great deal of trouble and expense, to accept the findings theretofore made by the election officers in 1914 and issue certificates without application to those whose names appeared on the 1914 rolls, and to require in 1916 the same test already applied to the 1914 voters to those who had not been tested in 1914.

The principle that it is not only proper, but necessary to adapt statutory regulations to the demands of convenience, is too sound and well-recognized to permit extended argument. This principle is clearly illustrated by the case of *Binswanger v. Whittle, et al.* (Md. 1938), 2 Atl. (2d) 174. There the Court of Appeals of Maryland was considering an attack upon the Maryland Registration Statutes, said attack being based upon the ground that the statutes provided different times for the electors to qualify, just as does the Oklahoma Registration Law of 1916. Bond, C. J., speaking for the court, said at page 175:

“* * * Obviously the statutes have for many years adapted registration provisions to the demands of convenience in the various parts of the State, and the present complaint would involve a recasting of the registration system.

“This court has, however, already expressed the opinion that uniformity in the times of registration in all portions of the State is not required by the Constitution. In *Bangs v. Fey*, 159 Md. 548, 556, 152 A. 508, 511, the court said, ‘It was suggested that there might be some question of the validity of laws which provide for quadrennial registration in Baltimore, and for other times for general registration elsewhere in the state, but we fail to see the force of such argument * * * so long as the qualifications for registration are the same.’ The requirement is thought to be concerned not with perfect uniformity in time and other conditions which would not substantially and

unreasonably affect the voting franchise of residents, but only with the more important matter of uniformity in the basis of the franchise. * * *

The fact that the 1914 voters were *tested at the polls in 1914* (and were found to possess the qualifications set out in Section 1, Article III of the Oklahoma Constitution), and those who did not vote in 1914 were *tested by precisely the same standards in 1916* (as a prerequisite to registration), is unimportant. The petitioner cannot complain successfully, because of the mandatory requirement for the registration of the 1914 voters, who had already shown that they possessed the qualifications set out in Section 1, Article III of the State Constitution, for at the registration period in 1916 the electors only met the same test as that theretofore passed by the 1914 voters; that is, they showed the precinct registrars that they had the qualifications set out in said Section 1, Article III.

Let us note the classes of persons who had to come in for registration in 1916. They are these:

First. All those adult persons, *whether white or colored*, who resided in the precinct in 1914 and were entitled to vote there but failed to vote. If permitted to refer to statistics as to the state's population, and as to the number of persons who voted in 1914, we have no doubt we could show that a very large percent of the population, both white and colored, did not vote in 1914. And no doubt we could show that a greater number of whites failed to vote in 1914, than the number of negroes who then failed to vote. There is no showing in the record as to these percentages. It is matter of common knowledge that a very large percent of qualified electors do not vote at a general election. How can it be said that there was any discrimination between the great number of white people who were

qualified to vote in 1914 and failed to do so, and the negroes then qualified to vote, who did not do so? Can it be said that the vast number of white people qualified to vote in 1914, and who failed to do so, were discriminated against by the requirement to register the persons who had voted in 1914? No. Nor can it be said with respect to the colored people.

Second. All persons who were minors in 1914 and therefore unable to vote, and who had attained majority at the registration period in 1916, were subject to precisely the same requirements as those imposed upon Lane by the statutes, he not having voted in 1914. Can it be believed that the Legislature intended to discriminate against this great crowd of persons, white and colored, who had just attained majority? They were at the time of the 1916 registration exactly in the position of Lane, but for a different reason.

Third. The many electors who had moved in from without the State of Oklahoma, and here acquired the right to vote after the 1914 elections, were subject to the same requirements as the plaintiff Lane. At that period of the state's history there was a large influx from other states. Was there a discrimination as to this class?

Fourth. After the 1914 election (November 5, 1918, by amendment of the state Constitution at Sec. 1, Art. 3) the women—about half of the population of the state—acquired for the first time the right to vote at a general election. No statute was ever enacted to save the women from the requirements placed upon those who did not vote in 1914. All of them had to appear before registration officers, just as Lane was required to do, and establish their qualifications, and become registered in order to vote.

- (e) **An examination of all the cases where registration laws have been stricken down upon the ground that they were discriminatory, shows that in every instance the statutes in question were overthrown because as to a given and complaining class statutory requirement was made for subjecting that class to an additional or different standard of qualifications to vote than that required of others. Exactly the same standards of qualifications to vote have always been required under the registration law of Oklahoma, as to all classes. The election officers at the polls in 1914 tested the voters by the same standards applied by the registrars in 1916. Petitioner's contention that the statutes are discriminatory appears to be without precedent.**

Myers v. Anderson, supra, upon which the petitioner undertakes to stand, squarely applies this test. The inquiry there was, did the statute fixing the qualifications of electors set up one standard for the white people, and another for the colored? It was held that the statute was void because it did require of the negroes a different standard of qualifications to vote than that required of the whites. If this Court considers the question as to whether or not the registration statutes of Oklahoma are valid, this test must dispose of the case in favor of the respondents, for as shown above, in 1916 no test of qualifications of electors was required beyond that required of those who voted in 1914.

- (f) **Petitioner's contention that the Oklahoma Registration Law is void because of the time limit for registration is not well founded.**

We find, upon careful examination, that the cases cited in support of this contention are not in point.

As typical of the cited cases, attention is called to the following, from petitioner's brief, page 64:

"The third syllabus of the above cited case of *Atty. Gen. v. City of Detroit* (1889), 78 Mich. 543, 4 N. W. 388, is as follows:

"The act is unreasonable and void because it provides for but five registration days during the year, at one of which the elector must make personal application for registration; *thus disfranchising persons who are ill or absent on registration days, but who would be able to vote on election days.*" (Italics ours.)

It will be observed that the Michigan statute under consideration made no provision to protect those who were absent, sick, or otherwise prevented from registration by unavoidable misfortune. The Oklahoma law under attack provides for a ten-day registration period, and further provision is made fully protecting those who were unable to register within the ten day period because of absence, illness, or other good cause. Those who had excuse for not registering within the ten days were allowed an additional period of *fifty days*, which fifty-day period commenced sometime later.

It is urged that under the Oklahoma law, the petitioner, Lane, had to be registered within the ten-day registration period in 1916, or forever thereafter be barred from voting. There is nothing in the statutes to justify petitioner's conclusion upon this point. It does appear that he is barred from voting until such time as the Legislature may cover the matter of suffrage by additional legislation. So long as there is no discrimination the entire matter lies with the Legislature.

With respect to the contention that the 1916 period for registration was unreasonably short the respondents say that the petitioner cannot be heard to raise this question for he alleges in his petition, and testified at the trial, that

he applied to his precinct registrar in 1916 for registration, and was refused. If the period had been six months instead of ten days, the result would have been precisely the same in the case of Lane and others similarly situated. We take it as fundamental that one may not successfully challenge a statute upon the ground of unreasonable time limit, whilst admitting that he has not been affected by the shortness of the period of which complaint is made.

The quare in this case is with respect to alleged discrimination. Examination of the various statutory provisions for registration must lead to the conclusion that there was no discrimination, merely because the legislature has determined that as a matter of policy the period for registration should be ten days.

As a further expression of such policy, section 5666, O. S. 1931, provides:

"If the qualifications of electors of the State of Oklahoma are changed by constitutional amendment after the permanent registration provided for in this Act shall have been completed, it shall be the duty of the proper officers provided for in this Act, to make a new registration of the qualified electors of each precinct in the State of Oklahoma in the same manner as provided in this Act. The precinct registrars shall make the new registration during the first ten days immediately following the first thirty days after such constitutional amendment has become effective. Provided, if any elector should be absent from the county of his residence during such period of time, or is prevented by sickness or unavoidable misfortune from registering with the precinct registrar, within such time, he may register with such precinct registrar at any time within thirty days after the close of such registration period upon complying with the other provisions of this Act, and the precinct registrar shall register no person under this provision unless he shall

be satisfied that such person was absent from the county or was sick during the aforesaid ten days' registration period, or was prevented from registration during such period by unavoidable misfortune. Such new registration when the same has been completed as provided in this Act, shall be filed in the office of the county clerk, and shall then become and be the permanent registration of the qualified electors in each county of the State."

We have called attention to the 1918 amendment to the Constitution of Oklahoma, which gave to women the right of suffrage. Theretofore they had not had this privilege in Oklahoma. When granted the right of suffrage, they were registered under the above quoted Section 5666. As to time limit for registration, and as to excuses for which they were given additional time, the provisions are the same as those of Section 5654 applicable in 1916. Thus, it is clear that from the first the Oklahoma Legislature has made no discrimination against negroes. The petitioner goes too far in charging the law makers of Oklahoma with intention to deprive colored persons of the right of suffrage by the statutory provisions relating to registration, because every white person, whether man or woman, has been subjected to the same requirements as those which Lane had to meet.

(g) Further as to petitioner's contention that the negroes of Oklahoma were discriminated against by the statutory provisions making it the duty of precinct registrars to issue registration certificates to qualified electors who voted in the general election of 1914.

Petitioner complains of the provisions for the registration of the qualified 1914 voters, which provisions are found in the latter part of Section 5654, O. S. 1931. These provisions should be considered in light of the following facts, namely:

That the 1914 voters had already met the qualifications set out in Section 1, Article III of the Oklahoma Constitution;

That the purpose of the Registration Law was to establish a permanent list of the qualified electors;

That the State officials had (in 1914) already compiled a portion of such permanent list;

That the use of this 1914 list greatly facilitated performance of the enormous task of compiling the permanent registration record, thus effecting a great saving in time, labor and expense to the State;

When so considered it is readily apparent that the purpose of such provisions was to expedite and simplify the registration of all qualified electors. No sound reason, either practical or theoretical, can be advanced for requiring the qualified voters of 1914 to again apply and show their qualifications.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

No. 460.—OCTOBER TERM, 1938.

I. W. Lane, Petitioner,
vs.
Jess Wilson, John Moss and
Marion Parks.

} On Writ of Certiorari to
the United States Circuit
Court of Appeals for the
Tenth Circuit.

[May 22, 1939.]

Mr. Justice FRANKFURTER delivered the opinion of the Court.

The case is here on *certiorari* to review the judgment of the Circuit Court of Appeals for the Tenth Circuit affirming that of the United States District Court for the Eastern District of Oklahoma, entered upon a directed verdict in favor of the defendants. The action was one for \$5,000 damages brought under Section 1979 of the Revised Statutes (8 U. S. C. § 43), by a colored citizen claiming discriminatory treatment resulting from electoral legislation of Oklahoma, in violation of the Fifteenth Amendment. *Certiorari* was granted, 306 U. S. —, because of the importance of the question and an asserted conflict with the decision in *Guinn v. United States*, 238 U. S. 347.

The constitution under which Oklahoma was admitted into the Union regulated the suffrage by Article III, whereby its "qualified electors" were to be "citizens of the State . . . who are over the age of twenty-one years" with disqualifications in the case of felons, paupers and lunatics. Soon after its admission the suffrage provisions of the Oklahoma Constitution were radically amended by the addition of a literacy test from which white voters were in effect relieved through the operation of a "grandfather clause." The clause was stricken down by this Court as violative of the prohibition against discrimination "on account of race, color or previous condition of servitude" of the Fifteenth Amendment. This outlawry occurred on June 21, 1915. In the meantime the Oklahoma general election of 1914 had been based on the offending "grandfather clause." After the invalidation of that clause a special session of the Oklahoma legislature enacted a new scheme

for registration as a prerequisite to voting. Oklahoma Laws of 1916, Act of February 26, 1916, c. 24. Section 4 of this statute (now Section 5654, Oklahoma Statutes 1931, 26 Okla. St. Ann. 74)¹ was obviously directed towards the consequences of the decision in *Guinn v. United States*, *supra*. Those who had voted in the general election of 1914, automatically remained qualified voters. The new registration requirements affected only others. These had to apply for registration between April 30, 1916 and May 11, 1916, if qualified at that time, with an extension to June 30, 1916, given only to those "absent from the county . . . during such period of time, or . . . prevented by sickness or unavoidable misfortune from registering . . . within such time". The crux of the present controversy is the validity of this registration scheme, with its dividing line between white citizens who had voted under the "grandfather clause" immunity prior to *Guinn v. United States*, *supra*, and citizens who were outside it, and the not more than 12 days as the normal period of registration for the theretofore proscribed class.

¹ "It shall be the duty of the precinct registrar to register each qualified elector of his election precinct who makes application between the thirtieth day of April, 1916, and the eleventh day of May, 1916, and such person applying shall at the time he applies to register be a qualified elector in such precinct and he shall comply with the provisions of this act, and it shall be the duty of every qualified elector to register within such time; provided, if any elector should be absent from the county of his residence during such period of time, or is prevented by sickness or unavoidable misfortune from registering with the precinct registrar within such time, he may register with such precinct registrar at any time after the tenth day of May, 1916, up to and including the thirtieth day of June, 1916, but the precinct registrar shall register no person under this provision unless he be satisfied that such person was absent from the county or was prevented from registering by sickness or unavoidable misfortune, as hereinbefore provided. And provided that it shall be the mandatory duty of every precinct registrar to issue registration certificates to every qualified elector who voted at the general election held in this state on the first Tuesday after the first Monday in November, 1914, without the application of said elector for registration, and, to deliver such certificate to such elector if he is still a qualified elector in such precinct and the failure to so register such elector who voted in such election held in November, 1914, shall not preclude or prevent such elector from voting in any election in this state; and provided further, that wherever any elector is refused registration by any registration officer such action may be reviewed by the district court of the county by the aggrieved elector by his filing within ten days a petition with the Clerk of said court, whereupon summons shall be issued to said registrar requiring him to answer within ten days, and the district court shall be an expeditious hearing and from his judgment an appeal will lie at the instance of either party to the Supreme Court of the State as in civil cases; and provided further, that the provisions of this act shall not apply to any school district elections. Provided further, that each county election board in this state shall furnish to each precinct election board in the respective counties a list of the voters who voted at the election in November, 1914, and such list shall be conclusive evidence of the right of such person to vote."

The petitioner, a colored citizen of Oklahoma, who was the plaintiff below and will hereafter be referred to as such, sued three county election officials for declining to register him on October 17, 1934. He was qualified for registration in 1916 but did not then get on the registration list. The evidence is in conflict whether he presented himself in that year for registration and, if so, under what circumstances registration was denied him. The fact is that plaintiff did not get on the register in 1916. Under the terms of the statute he thereby permanently lost the right to register and hence the right to vote. The central claim of plaintiff is that of the unconstitutionality of Section 5654. The defendants joined issue on this claim and further insisted that if there had been illegality in a denial of the plaintiff's right to registration, his proper recourse was to the courts of Oklahoma. The District Court took the case from the jury and its action was affirmed by the Circuit Court of Appeals. It found no proof of discrimination against negroes in the administration of Section 5654 and denied that the legislation was in conflict with the Fifteenth Amendment. 98 F. (2d) 980.

The defendants urge two bars to the plaintiff's recovery, apart from the constitutional validity of Section 5654. They say that on the plaintiff's own assumption of its invalidity, there is no Oklahoma statute under which he could register and therefore no right to registration has been denied. Secondly, they argue that the state procedure for determining claims of discrimination must be employed before invoking the federal judiciary. These contentions will be considered first, for the disposition of a constitutional question must be reserved to the last.

The first objection derives from a misapplication of *Giles v. Harris*, 189 U. S. 475. In that case a bill in equity was brought by a colored man on behalf of himself "and on behalf of more than five thousand negroes, citizens of the county of Montgomery, Alabama, similarly situated" which in effect asked the federal court "to supervise the voting in that State by officers of the court." What this Court called a "new and extraordinary situation" was found "strikingly" to reinforce "the argument that equity cannot undertake now, any more than it has in the past, to enforce political rights". See 189 U. S. at 487.² Apart from this traditional re-

² See also, *In re Sawyer*, 124 U. S. 200; *Walton v. House of Rep.*, 265 U. S. 487; 4 POMEROY, EQUITY § 1743 et seq.; Pound, *Equitable Relief Against Defamation and Injuries to Personality*, 29 HARV. L. REV. 649, 681.

striktion upon the exercise of equitable jurisdiction there was another difficulty in *Giles v. Harris*. The plaintiff there was in effect asking for specific performance of his right under Alabama electoral legislation. This presupposed the validity of the legislation under which he was claiming. But the whole theory of his bill was the invalidity of this legislation. Naturally enough, this Court took his claim at its face value and found no legislation on the basis of which specific performance could be decreed.³

This case is very different from *Giles v. Harris*—the difference having been explicitly foreshadowed by *Giles v. Harris* itself. In that case this Court declared "we are not prepared to say that an action at law could not be maintained on the facts alleged in the bill." 189 U. S. at 485. That is precisely the basis of the present action, brought under the following "appropriate legislation" of Congress to enforce the Fifteenth Amendment:

"Every person who, under color of any statute, . . . of any State, subjects, or causes to be subjected, any citizen of the United States . . . within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law."

The Fifteenth Amendment secures freedom from discrimination on account of race in matters affecting the franchise. Whosoever "under color of any statute" subjects another to such discrimination thereby deprives him of what the Fifteenth Amendment secures and, under Section 1979 becomes "liable to the party injured in an action at law." The theory of the plaintiff's action is that the defendants, acting under color of Section 5654, did discriminate against him because that Section inherently operates discriminatorily. If this claim is sustained his right to sue under R. S. Sec.

³ "If the sections of the constitution concerning registration were illegal in their inception, it would be a new doctrine in constitutional law that the original invalidity could be cured by an administration which defeated their intent. We express no opinion as to the alleged fact of their unconstitutionality beyond saying that we are not willing to assume that they are valid, in the face of the allegations and main object of the bill, for the purpose of granting the relief which it was necessary to pray in order that that object should be secured." 189 U. S. at 487. Recognition of the difference between an action for damages and the equitable relief prayed for in *Giles v. Harris* was repeated at the close of the opinion. See 189 U. S. at 488. Justices Harlan, Brewer, and Brown were of the opinion that it was competent for a federal court to grant even the equitable relief asked for in *Giles v. Harris*.

⁴ The Act of April 20, 1871, c. 22, 17 STAT. 13, which became Section 1979 of the Revised Statutes, and is now 3 U. S. C. § 43.

tion 1979 follows. The basis of this action is inequality of treatment though under color of law, not denial of the right to vote. Compare *Nixon v. Herndon*, 273 U. S. 536.

The other preliminary objection to the maintenance of this action is likewise untenable. To vindicate his present grievance the plaintiff did not have to pursue whatever remedy may have been open to him in the state courts. Normally, the state legislative process, sometimes exercised through administrative powers conferred on state courts, must be completed before resort to the federal courts can be had. *Prentiss v. Atlantic Coast Line Co.*, 211 U. S. 210. But the state procedure open for one in the plaintiff's situation (Section 5654) has all the indicia of a conventional judicial proceeding and does not confer upon the Oklahoma courts any of the discretionary or initiatory functions that are characteristic of administrative agencies. See Section I of Article IV of the Oklahoma Constitution; *Oklahoma Cotton Ginners' Ass'n v. State*, 174 Okla. 243. Barring only exceptional circumstances, see e.g. *Gilchrist v. Interborough Rapid Transit Co.*, 279 U. S. 159, or explicit statutory requirements, e. g. 48 STAT. 775; 50 STAT. 738; 28 U. S. C. § 41(1), resort to a federal court may be had without first exhausting the judicial remedies of state courts. *Bacon v. Rutland R. R.*, 232 U. S. 134; *Pacific Tel. & Tel. Co. v. Kuykendall*, 265 U. S. 196.

We therefore cannot avoid passing on the merits of plaintiff's constitutional claims. The reach of the Fifteenth Amendment against contrivances by a state to thwart equality in the enjoyment of the right to vote by citizens of the United States regardless of race or color, has been amply expounded by prior decisions. *Guinn v. United States*, 238 U. S. 347; *Myers v. Anderson*, 238 U. S. 368. The Amendment nullifies sophisticated as well as simple-minded modes of discrimination. It hits onerous procedural requirements which effectively handicap exercise of the franchise by the colored race although the abstract right to vote may remain unrestricted as to race. When in *Guinn v. United States*, *supra*, the Oklahoma "grandfather clause" was found violative of the Fifteenth Amendment, Oklahoma was confronted with the serious task of devising a new registration system consonant with her own political ideas but also consistent with the Federal Constitution. We are compelled to conclude, however reluctantly, that the legislation of 1916 partakes too much of the infirmity of the "grandfather clause" to be able to survive.

Section 5652 of the Oklahoma statutes makes registration a prerequisite to voting.⁵ By Sections 5654 and 5659⁶ all citizens who were qualified to vote in 1916 but had not voted in 1914 were required to register, save in the exceptional circumstances, between April 30 and May 11, 1916, and in default of such registration were perpetually disenfranchised. Exemption from this onerous provision was enjoyed by all who had registered in 1914. But this registration was held under the statute which was condemned in the *Guinn* case. Unfair discrimination was thus retained by automatically granting voting privileges for life to the white citizens whom the constitutional "grandfather clause" had sheltered while subjecting colored citizens to a new burden. The practical effect of the 1916 legislation was to accord to the members of the negro race who had been discriminated against in the outlawed registration system of 1914, not more than 12 days within which to reassert constitutional rights which this Court found in the *Guinn* case to have been improperly taken from them. We believe that the opportunity thus given negro voters to free themselves from the effects of discrimination to which they should never have been subjected was too cabined and confined. The restrictions imposed must be judged with reference to those for whom they were designed. It must be remembered that we are dealing with a body of citizens lacking the habits and traditions of political independence and otherwise living in circumstances which do not encourage initiative and enterprise. To be sure, in exceptional cases a supplemental period was available. But the narrow basis of the supplemental registration, the very brief normal period of relief for the persons and purposes

⁵ "It shall be the duty of every qualified elector in this state to register as an elector under the provisions of this Act, and no elector shall be permitted to vote at any election unless he shall register as herein provided, and no elector shall be permitted to vote in any primary election of any political party except of the political party of which his registration certificate shows him to be a member." Section 2, Oklahoma Laws of 1916, c. 24.

⁶ "Any person who may become a qualified elector in any precinct in this State after the tenth day of May, 1916, or after the closing of any other registration period, may register as an elector by making application to the registrar of the precinct in which he is a qualified voter, not more than twenty ~~in~~ less than ten days before the day of holding any election and upon complying with all the terms and provisions of this Act, and it shall be the duty of precinct registrars to register such qualified electors in their precinct under the terms and provisions of this Act, beginning twenty days before the date of holding any election and continuing for a period of ten days. Precinct registrars shall have no authority to register electors at any time except as provided in this Act and no registration certificate issued by any precinct registrar at any other time except as herein provided shall be valid." Section 9, Oklahoma Laws of 1916, c. 24.

in question, the practical difficulties, of which the record in this case gives glimpses, inevitable in the administration of such strict registration provisions, leave no escape from the conclusion that the means chosen as substitutes for the invalidated "grandfather clause" were themselves invalid under the Fifteenth Amendment. They operated unfairly against the very class on whose behalf the protection of the Constitution was here successfully invoked.

The judgment of the Circuit Court of Appeals must, therefore, be reversed and the cause remanded to the District Court for further proceedings in accordance with this opinion.

Mr. Justice McREYNOLDS and Mr. Justice BUTLER think that the court below reached the right conclusion and that its judgment should be affirmed.

Mr. Justice DOUGLAS took no part in the consideration or disposition of this case.

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